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FINAL
CITY COUNCIL
CITY OF WICHITA
KANSAS

City Council Meeting
09:00 a.m. August 2, 2011

City Council Chambers
455 North Main

OPENING OF REGULAR MEETING

- Call to Order
- Invocation
- Pledge of Allegiance
- Approve the minutes of the regular meeting on July 26, 2011

AWARDS AND PROCLAMATIONS

- Proclamation:
National Clown Week
- Awards:
Wichita Fire Department Citizens Academy Graduates

I. PUBLIC AGENDA

NOTICE: No action will be taken relative to items on this agenda other than referral for information. Requests to appear will be placed on a "first-come, first-served" basis. This portion of the meeting is limited to thirty minutes and shall be subject to a limitation of five minutes for each presentation with no extension of time permitted. No speaker shall be allowed to appear more frequently than once every fourth meeting. Members of the public desiring to present matters to the Council on the public agenda must submit a request in writing to the office of the city manager prior to twelve noon on the Tuesday preceding the council meeting. Matter pertaining to personnel, litigation and violations of laws and ordinances are excluded from the agenda. Rules of decorum as provided in this code will be observed.

1. David Usher – Wichita Parks and Recreation limiting number of organizations to be able to join the GWFL (Greater Wichita Football League)

II. CONSENT AGENDAS (ITEMS 1 THROUGH 13)

NOTICE: Items listed under the "Consent Agendas" will be enacted by one motion with no separate discussion. If discussion on an item is desired, the item will be removed from the "Consent Agendas" and considered separately

(The Council will be considering the City Council Consent Agenda as well as the Planning, Housing, and Airport Consent Agendas. Please see "ATTACHMENT 1 – CONSENT AGENDA ITEMS" for a listing of all Consent Agenda Items.)

COUNCIL BUSINESS

III. UNFINISHED COUNCIL BUSINESS

1. Ordinance Amending Chapter 3.22 of the Code of the City of Wichita Pertaining to Licensing and Regulation of Haunted Houses and Haunted Walks/Fields.
(Deferred July 26, 2011, Second Reading)

RECOMMENDED ACTION: Approve second reading of the ordinance amending Chapter 3.22 of the Code of the City of Wichita pertaining to haunted houses and haunted walks/fields.

IV. NEW COUNCIL BUSINESS

1. 2012/2013 Annual Operating Budget.

RECOMMENDED ACTION: Receive public comment on the 2012 Proposed Budget.

2. St. Francis Street Improvement, between Douglas and 2nd Street. (District VI)

RECOMMENDED ACTION: Approve the construction budget, place the amending ordinance on first reading, and authorize the necessary signatures.

3. Seneca, between I-235 and 31st Street South. (District IV)

RECOMMENDED ACTION: Approve the project, place the amending ordinance on first reading and authorize the signing of State/Federal agreements as required.

COUNCIL BUSINESS SUBMITTED BY CITY AUTHORITIES

PLANNING AGENDA

NOTICE: Public hearing on planning items is conducted by the MAPC under provisions of State law. Adopted policy is that additional hearing on zoning applications will not be conducted by the City Council unless a statement alleging (1) unfair hearing before the MAPC, or (2) alleging new facts or evidence has been filed with the City Clerk by 5p.m. on the Wednesday preceding this meeting. The Council will determine from the written statement whether to return the matter to the MAPC for rehearing.

V. NON-CONSENT PLANNING AGENDA

None

HOUSING AGENDA

NOTICE: The City Council is meeting as the governing body of the Housing Authority for consideration and action on the items on this Agenda, pursuant to State law, HUD, and City ordinance. The meeting of the Authority is deemed called to order at the start of this Agenda and adjourned at the conclusion.

Fern Griffith, Housing Member is also seated with the City Council.

VI. NON-CONSENT HOUSING AGENDA

None

AIRPORT AGENDA

NOTICE: The City Council is meeting as the governing body of the Airport Authority for consideration and action on items on this Agenda, pursuant to State law and City ordinance. The meeting of the Authority is deemed called to order at the start of this Agenda and adjourned at the conclusion.

VII. NON-CONSENT AIRPORT AGENDA

None

COUNCIL AGENDA

VIII. COUNCIL MEMBER AGENDA

None

IX. COUNCIL MEMBER APPOINTMENTS

1. **Board Appointments.**

RECOMMENDED ACTION: Approve the Appointments.

Adjournment

Workshop to follow

(ATTACHMENT 1 – CONSENT AGENDA ITEMS)

II. CITY COUNCIL CONSENT AGENDA ITEMS (ITEMS 1 THROUGH 13)

1. Report of Board of Bids and Contracts dated August 1, 2011.

RECOMMENDED ACTION: Receive and file report; approve Contracts;
authorize necessary signatures.

2. Applications for Licenses to Retail Cereal Malt Beverages:

<u>New</u>	<u>2011</u>	<u>(Consumption off Premises)</u>
Lori Cottrell	Walmart Market #5990***	2111 North Amidon Avenue

***Retailer grocery stores, convenience stores, etc.

RECOMMENDED ACTION: Approve licenses subject to Staff review and approval.

3. Preliminary Estimates:

- a. Preliminary Estimates. (See Attached)

RECOMMENDED ACTION: Receive and file.

4. Petitions for Public Improvements:

- a. Petitions for Street Paving for Berkeley Square 1st Addition, Home Bank and Trust Addition and an unplatted tract, north of 13th, west of Greenwich. (District II)

RECOMMENDED ACTION: Approve Petitions; adopt resolutions.

5. Consideration of Street Closures/Uses.

- a. Community Events – Delano Block Party. (District IV)

RECOMMENDED ACTION: Approve the request subject to; (1) Hiring off-duty certified law enforcement officers as required; (2) Obtaining barricades to close the streets in accordance with requirements of Police, Fire and Public Works Department; and (3) Securing a Certificate of Liability Insurance on file with the Community Events Coordinator.

6. Agreements/Contracts:

- a. Gas Pipe Line at Sewage Treatment Plant No. 2. (District III)

RECOMMENDED ACTION: Approve Agreements/Contracts; authorize the necessary signatures.

7. Property Acquisitions:

- a. Acquisition of Land near 151st Street West and Kellogg for the West Kellogg Freeway Project. (Districts IV and V)
- b. Partial Acquisition of 2327 South Broadway for the Pawnee and Broadway Intersection Improvement Project. (District III)
- c. Partial Acquisition of Vacant Land at the Northeast Corner of 135th Street West and Kellogg for the West Kellogg Freeway Project. (Districts IV and V)
- d. Acquisition of 1541-1551 South 151st for the West Kellogg Freeway Project. (Districts IV and V)

RECOMMENDED ACTION: Approve budgets and Contracts; authorize necessary signatures.

8. Consent to Leasehold Mortgage and Subordination Agreement, Four-G, LLC. (District I)

RECOMMENDED ACTION: Approve the Leasehold Mortgage and Subordination Agreement; authorize the necessary signatures and direct staff to hold the documents for delivery until September 2011 as instructed by the Lender.

9. Acquisition by Eminent Domain of Tracts Required for the Integrated Local Water Supply Plan. (Harvey County)

RECOMMENDED ACTION: Adopt and place on first reading the ordinance providing for the acquisition by eminent domain of certain real property; and directing the City Attorney to file the appropriate proceedings in the District court to accomplish such acquisition.

9a. *Amended Ordinances and Resolution-Capital Improvement Program Projects.*

RECOMMENDED ACTION: Place the amending ordinances on first reading, adopt the amending resolution, and authorize the necessary signatures.

10. Second Reading Ordinances: (First Read July 26, 2011)

- a. List of Second Reading Ordinances. (See Attached)

RECOMMENDED ACTION: Adopt the Ordinances.

II. CONSENT PLANNING AGENDA ITEMS

NOTICE: Public hearing on planning items is conducted by the MAPC under provisions of State law. Adopted policy is that additional hearing on zoning applications will not be conducted by the City Council unless a statement alleging (1) unfair hearing before the MAPC, or (2) alleging new facts or evidence has been filed with the City Clerk by 5p.m. on the Wednesday preceding this meeting. The Council will determine from the written statement whether to return the matter to the MAPC for rehearing.

11. *SUB2011-00024 -- Plat of RWD No. 3 Booster Pump Station Addition located at the northwest corner of 55th Street South and Oliver. (County)

RECOMMENDED ACTION: Approve the documents and plat and authorize the necessary signatures.

12. *DED2011-00004 – Dedication of Alley Right-of-Way located south of Maple and east of West Street. (District IV)

RECOMMENDED ACTION: Accept the Dedication.

II. CONSENT HOUSING AGENDA ITEMS

NOTICE: The City Council is meeting as the governing body of the Housing Authority for consideration and action on the items on this Agenda, pursuant to State law, HUD, and City ordinance. The meeting of the Authority is deemed called to order at the start of this Agenda and adjourned at the conclusion.

Fern Griffith, Housing Member is also seated with the City Council.

None

II. CONSENT AIRPORT AGENDA ITEMS

NOTICE: The City Council is meeting as the governing body of the Airport Authority for consideration and action on items on this Agenda, pursuant to State law and City ordinance. The meeting of the Authority is deemed called to order at the start of this Agenda and adjourned at the conclusion.

13. *Airfield Electrical System Replacement - Wichita Mid-Continent Airport.

RECOMMENDED ACTION: Initiate the project, approve the budget and the contract, and authorize the necessary signatures. It is also recommended that the WAA approve the grant application and acceptance of grant funds and authorize the Director of Airports to sign all necessary documents related to the grant.

City of Wichita
City Council Meeting
August 2, 2011

TO: Mayor and City Council Members

SUBJECT: Ordinance Amending Chapter 3.22 of the Code of the City of Wichita Pertaining to Licensing and Regulation of Haunted Houses and Haunted Walks/Fields

INITIATED BY: Office of Central Inspection

AGENDA: Unfinished Business

Recommendation: Approve second reading of the ordinance amending Chapter 3.22 of the Code of the City of Wichita pertaining to licensing and regulation of haunted houses and outdoor haunted walks/fields.

Background: Chapter 3.22 of the Code of the City of Wichita sets forth minimum requirements for temporary haunted houses (indoor and outdoor) during the Halloween season. The first reading of an ordinance amending Chapter 3.22 was approved by the City Council on July 19, 2011, after significant discussion. On July 26, 2011, the second reading of the proposed ordinance was deferred until August 2, 2011 for further public discussion. Based on input received from the City Council, direction from the City Manager and some follow-up discussion with operators, several changes have been made to the proposed ordinance, including:

1. reduction of the minimum age of a licensee from 21 to 18 years of age;
2. inclusion of a definition of “Fire Watch” and addition of language authorizing the Fire Chief to approve a “Fire Watch” in lieu of an automatic fire detection systems or sprinkler systems when such watch would adequately protect the safety of public while on the licensee’s premises; and
3. addition of language clarifying requirements for *primary* egress corridors/hallways and exit doors, allowing more narrow halls or walkways that are not part of the primary egress system.

With regard to Council discussion about Americans with Disabilities Act requirements, the Law Department has determined that Americans with Disabilities Act requirements would be applicable to these types of structures and facilities. However, enforcement of these provisions would occur through the plan approval and permitting processes, so no additional changes are required to the license ordinance.

The current ordinance has not been substantially amended in over thirty years, and includes minimal license application requirements and building/life safety regulation. Concerns about the ordinance were expressed last year by a haunted house operator during a City Council Public Agenda. In early 2011, the City Manager directed the Law Department to develop proposed amendments to the ordinance.

In late March 2011, the Law Department completed an initial draft of proposed ordinance amendments, and circulated the draft ordinance for review by Fire Department, Office of Central Inspection, Police Department and Finance Department (Express Office) staff. In late April 2011, a revised draft ordinance was completed by Law, incorporating most suggested interdepartmental staff team recommendations. In May 2011, at the direction of the City Manager, the proposed amendments were provided to known Wichita haunted house operators/representatives to obtain their input. On June 14, 2011, staff met with haunted house operators/representatives to review the proposed ordinance in detail, and to obtain their feedback and suggestions. Many of the haunted house operator/representative suggestions were subsequently incorporated into the draft ordinance. A revised, proposed ordinance was re-issued to operators/representatives in late June for final comment, and again on July 28, 2011, after additional modifications.

Analysis: The proposed amendments to Chapter 3.22 of the Code of the City of Wichita pertaining to haunted houses and outdoor haunted walks/fields are outlined below.

- Section 3.22.010. The definition of “Haunted House” is clarified and several new definitions are added. New definitions include: “Fire Watch”, “Haunted House, Indoor”; “Haunted Walk/Field, Outdoor”; “Permanent Haunted House” (indoor only); and “Temporary Haunted House” (both indoor and outdoor).
- Sections 3.22.015 and 3.22.080. Enforcement action is specifically allowed by Fire, Police, Central Inspection and Public Works & Utilities (Environmental Services Division); revocation specifically allowed by Fire, Police and Central Inspection.
- Section 3.22.020. The application fee for a temporary/seasonal haunted house (September 1st through November 2nd) is raised from \$50.00 to \$100.00 (cost recovery). The annual license application fee for newly allowed “permanent indoor” haunted houses is established at \$250.00.
- Section 3.22.020 (a) and (b). A re-inspection fee of \$50.00 will be assessed for each re-inspection required of property at the time of licensing or renewal, and in the case of permanent indoor haunted houses, for any required inspections related to modifications made during the annual license period. No inspection fee is charged for the initial license inspection.
- Section 3.22.040. The liability insurance requirement is increased from a minimum of \$25,000 to \$500,000 per individual, and from a minimum of fifty thousand to one million dollars per occurrence.
- Section 3.22.035. A section setting forth minimum application and applicant/operator requirements is added. Felons and sex offenders are prohibited from obtaining a license.
- Section 3.22.060. Amended operational standards, safety requirements, inspection and general regulations are added, and include the following:
 - additional and/or clarified fire and life safety standards;
 - clarified off-street parking and parking location requirements;
 - minimum restroom facility (permanent or temporary) requirements;
 - compliance with noise and zoning ordinances;
 - prohibition in residential zoning districts unless at a church, school or on public property;
 - temporary/seasonal indoor or outdoor haunted house operations are allowed from September 1st through November 2nd;
 - indoor haunted houses may only operate between the hours of noon and two a.m.; and
 - outdoor haunted houses or outdoor walks/fields may only operate on a temporary/seasonal basis, and only open between the hours of noon and eleven p.m. Sunday through Thursday, and between the hours of noon and midnight on Friday and Saturday.
- Section 3.22.062. Allows for inspection of a haunted house, facility and/or premise by City officials.
- Section 3.22.065. This new section outlines maximum facility/premise occupant load capacity determination and occupant load posting by the Fire Chief and Superintendent of Central Inspection.
- Section 3.22.070. Criminal penalty is increased from a fine not to exceed \$100 to a fine not to exceed \$500.00. This is consistent with other City license regulation penalties.
- Section 3.22.080. Criteria for denial and/or suspension of license are established.
- Section 3.22.090. Procedures for appeal of denial, suspension or revocation of a license are established.

Financial Considerations: There are no costs to the City associated with adoption of the ordinance. Adoption of the proposed license and inspection fee increases/additions will substantially recover City costs associated with haunted house and haunted walk/field license reviews and approvals.

Goal Impact: This item impacts the Provide and Safe and Secure Community goal indicator by providing appropriate licensing, insurance, building/life safety and inspection requirements for haunted houses and outdoor haunted walks/fields.

Legal Considerations: The Law Department prepared the ordinance and has approved it as to form.

Recommendation/Action: It is recommended that the City Council approve second reading of the ordinance amending Chapter 3.22 of the Code of the City of Wichita pertaining to haunted houses and haunted walks/fields.

Attachment: Delineated ordinance amending Chapter 3.22 of the Code of the City of Wichita.

07/26/2011

ORDINANCE NO. 49-042

AN ORDINANCE AMENDING SECTIONS 3.22.010, 3.22.020, 3.22.040, 3.22.060 AND 3.22.070, CREATING SECTIONS 3.22.015, 3.22.035, 3.22.062, 3.22.065, 3.22.067, 3.22.080 AND 3.22.090 OF THE CODE OF THE CITY OF WICHITA, KANSAS, PERTAINING TO HAUNTED HOUSES, HALLOWEEN HOUSES, MYSTERY MANSIONS AND GHOST WALKS AND REPEALING THE ORIGINALS OF SECTIONS 3.22.010, 3.22.020, 3.22.040, 3.22.050, 3.22.060 AND 3.22.070 OF THE CODE OF THE CITY OF WICHITA, KANSAS.

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS:

SECTION 1. Section 3.22.010 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

"Definitions. 'Chief of Police' means the Chief of the Wichita Police Department or his/her designee;

'Fire Chief' means the Director of the Fire Department of the City of Wichita, Kansas, or his/her designee;

'Fire Watch' means a temporary measure intended to ensure continuous and systematic surveillance of a building or portion thereof by one or more qualified individuals or standby personnel when required by the Fire Chief for the purpose of identifying and controlling fire hazards, detecting early signs of unwanted fire, raising an alarm of fire and notifying the Fire Department;

‘Halloween Season’ means the period of time from September 1st through November 2nd of any calendar year;

‘Haunted House, Indoor’ means any indoor permanent or temporary building, structure or facility, or portion thereof, which provides walkways or any other system that transports passengers through a facility or course so arranged that the means of egress are not readily apparent due to theatrical distractions or displays, are not plainly visible due to low illumination, or are not readily accessible or available due to the type of course, pathways or method of transportation through the building or structure, and where the public is invited to view, be entertained, scared or amused by simulated creations of sound, theatrical displays or distractions, or sight and feeling of a ghoulish, ghostly, spectral, imaginary and haunting nature in the spirit of and celebration of the holiday known as Halloween. Unless otherwise specified, such term shall include temporary and permanent haunted houses, indoor.

‘Haunted Walk/Field, Outdoor’ means an attraction similar to haunted houses, indoor, which occurs primarily outdoors but may include both outdoor or indoor areas where egress to a public way is not readily identifiable, where the public is invited to view, be entertained, scared or amused by simulated creations of sound, theatrical distractions, sight and feeling of a ghoulish, ghostly, spectral, imaginary and haunting nature in the spirit of and celebration of the holiday known as Halloween.

‘Permanent Haunted House’ means a ‘Haunted House, Indoor’ that meets the requirements of the Wichita-Sedgwick County Unified Zoning Code as related

to “Recreation and Entertainment, Indoor” uses, as well as all City of Wichita building, fire, electrical, elevator, mechanical, plumbing and sewer codes, which may operate year round.

‘Person’ means any individual, firm, association, company, partnership, or other legal entity.

‘Superintendent of Central Inspection’ means the superintendent or person in charge of the Office of Central Inspection of the City or his/her designee

‘Temporary Haunted House, Indoor or Temporary Haunted Walk/Field, Outdoor’ means a haunted house, indoor, or haunted walk/field, outdoor that is operated only during the Halloween Season.”

SECTION 2. Section 3.22.015 of the Code of the City of Wichita, Kansas, is hereby created to read as follows:

“Enforcement of provisions of Code. (a) The Office of Central Inspection of the City of Wichita, the Wichita Police Department, the Wichita Fire Department, the Wichita Department of Public Works & Utilities and the authorized representatives of such departments, shall be responsible for the enforcement of all provisions of this Code.

(b) The provisions of this Code are in addition to any other health, fire, zoning, building code or life safety requirements within the ordinances of the Code of the City of Wichita or laws of the State of Kansas.”

SECTION 3. Section 3.22.020 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

“License or permit required--Fee. (a) It is unlawful for any person to engage, conduct, pursue, operate, authorize or permit, within the corporate limits of the city, a temporary haunted house, indoor or haunted walk/field, outdoor, whether or not an admittance fee is charged, without first obtaining a license from the City Treasurer and paying a license fee of one hundred dollars.

In addition to the application fee, an inspection fee not to exceed fifty dollars (\$50.00) will be assessed for each subsequent inspection(s) of the property by the Office of Central Inspection or the Fire Department to determine compliance with the provisions of this Code at the time of licensing. No inspection fee shall be assessed for the initial inspection. Further, the applicant or his/her contractors or other agents are responsible for obtaining any and all permits and inspections required pursuant to the building, fire, electrical, mechanical, plumbing and elevator codes of the City of Wichita.

(b) It is unlawful for any person to engage, conduct, pursue, operate, authorize or permit, within the corporate limits of the city, a permanent haunted house, indoor, whether or not an admittance fee is charged, without first obtaining a license from the City Treasurer and paying a license fee of two hundred fifty dollars;

In addition to the application fee, an inspection fee not to exceed fifty dollars (\$50.00) will be assessed for each subsequent inspection(s) of the property by the Office of Central Inspection or the Fire Department to determine compliance with the provisions of this Code at the time of licensing, or during the annual license period when modifications to egress paths or systems, theatrical

distraction or displays, or egress path illumination are made. Such modifications must be inspected and approved by the City of Wichita Fire Department and/or Office of Central Inspection. No inspection fee shall be assessed for the initial annual license inspection. Further, the applicant or his/her contractors or other agents are responsible for obtaining any and all permits and inspections required pursuant to the building, fire, plumbing, sewer, mechanical, elevator and electrical codes of the City of Wichita.

(c) No license shall be issued for the operation of a haunted house, indoor or haunted walk/field, outdoor in any residential zoning district except those located in buildings of churches, schools or upon public property with the written approval of the municipality, department or agency authorized to issue such approval for use of the property.

(d) The license for temporary haunted houses, indoor or haunted walks/fields, outdoor shall be effective for one annual Halloween Season as defined by this chapter.

(e) The license for permanent haunted houses, indoor shall be effective for twelve months.”

SECTION 4. Section 3.22.035 of the Code of the City of Wichita is hereby created to read as follows:

“Application. (a) Before any license is granted or issued for a haunted house, indoor or haunted walk/field, outdoor, an application shall be filed with the City Treasurer, setting forth the following facts:

(1) The name, address, date of birth of the applicant and a telephone number where the applicant can be reached between the hours of eight a.m. and five p.m. and during the hours of operation of the haunted house, indoor or haunted walk/field, outdoor;

(2) Address of the haunted house, indoor or haunted walk/field, outdoor;

(3) Property owner's name, address and phone number;

(4) Dates for which the license is desired;

(5) Hours and days the haunted house, indoor or haunted walk/field, outdoor is to be open and closed;

(6) A statement that the applicant is familiar with the conditions imposed by the terms of this chapter;

(7) Written consent of the property owner;

(8) Site and/or floor plan of all proposed indoor or outdoor permanent or temporary buildings, structures, facilities or property;

(9) Plan for parking and restroom facilities;

(10) Maximum occupant load of the buildings, facilities or areas.

(b) In addition, the applicant must furnish:

(1) The name(s) and address(es) of the owner(s) of the premises where such haunted house, indoor or haunted walk/field, outdoor is located;

(2) The manager or operator and, if a corporation or partnership, all the names and addresses of the officers of such corporation or partnership and any individual who owns twenty-five (25) percent or more of the stock of such corporation. If the license is to be held by a corporation, the resident officer of the corporation. If the applicant is a partnership, all the names, addresses, social security numbers and dates of birth of all partners of the partnership;

(3) The name, address and date of birth of the applicant, owner, manager or other responsible person of the haunted house, indoor or haunted walk/field, outdoor;

(4) An emergency management plan, consisting of, but not limited to, fire and storm evacuation, patron crowd control and emergency access for police, fire and ambulance;

(5) Detailed plans and drawings of the haunted house, indoor or haunted walk/field, outdoor shall be submitted to the Office of Central Inspection and the Wichita Fire Department, indicating the waiting area for persons seeking admission, the parking areas, all restrooms, emergency exits and all other areas accessible by patrons;

(6) A statement as to whether the applicant has ever had any license denied, revoked or suspended by the City of Wichita or the State of Kansas or any other governmental entity, the reason therefor and the business activity or occupation of the individual subsequent to such suspension, revocation or denial;

(7) A statement as to whether the applicant has ever been convicted of a felony or other crime as set forth in this section which would make the applicant ineligible to be licensed pursuant to the terms of this Chapter;

(8) A statement that the applicant consents and agrees that any member of the Police Department, Fire Department, Office of Central Inspection and Department of Public Works & Utilities may, at any time, enter and inspect any part of such premises.

(c) A license shall be denied if one or more of the following conditions exist:

(1) Any applicant, owner, officer, manager or director of a corporate applicant, any person owning twenty-five percent (25%) or more of the stock of a corporate applicant, or any partner of a partnership applicant if the partner has, within the preceding ten years, been convicted of or placed on diversion for a:

a. Felony;

b. A crime for which the individual is required to register as a sex offender pursuant to K.S.A. 22-4901, et seq. or laws or statutes in other local, state or federal jurisdictions which require an offender to be registered as a sex offender;

c. For any conviction or diversion of a misdemeanor within the last three years involving:

i. Laws pertaining to any controlled substance(s) prohibited by the Uniform Controlled Substance Act, K.S.A. 65-4104, *et seq.* or other laws of the state of Kansas or the United States and amendments thereto;

ii. Prostitution;

iii. Public Indecency;

iv. A sex crime or other person crime as defined by Chapter 21 of the Kansas Statutes Annotated;

v. Any weapons charge.

(2) An applicant is less than eighteen (18) years of age;

(3) The premises do not comply with the health, building, fire, electrical, mechanical, plumbing, elevator and zoning codes of the City of Wichita, except as allowed by the provisions of Section 3.22.020(c) regarding the location of the temporary haunted house, indoor or haunted walk/field, outdoor;

(4) The applicant has knowingly made a false, misleading or fraudulent statement of fact to the City in the application process;

(5) The application is incomplete or if it contains any material misrepresentation.

(6) The applicant, in the last two years has violated the provisions of this Chapter or has had a previous haunted house, indoor or haunted walk/field, outdoor license revoked for failure to comply with the

term and conditions of the license or for violations of the ordinances of the City of Wichita.

(d) The application is filed with, and the license fee is paid to the City Treasurer. The license will not be issued until the application has been reviewed and approved by the Chief of Police, the Office of Central Inspection and the Fire Chief.

(e) No permanent haunted house, indoor license will be issued to any facility which is not property zoned for “Recreation and Entertainment, Indoor” pursuant to the Wichita-Sedgwick County Unified Zoning Code. All activities of a permanent haunted house, indoor must occur completely inside the structure or facility licensed as a permanent haunted house, indoor.

(f) Applications for a license or renewal will not be accepted by the City Treasurer less than thirty (30) days prior to the opening of the haunted house, indoor or haunted walk/field, outdoor, or expiration of a current license.”

SECTION 5. Section 3.22.040 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

“Liability insurance. (a) No person within the corporate limits of the city shall be licensed to engage in the operation of a haunted house, indoor or haunted field/walk, outdoor until he has deposited and filed with the City Treasurer, a public liability insurance policy with coverage of not less than five hundred thousand dollars for injury or death to any one person and one million dollars for injury or death to any number of persons in any one accident.

(b) It is unlawful for any person to operate a haunted house, indoor or haunted walk/field, outdoor without obtaining and maintaining in force, during the operation of the haunted house, indoor or haunted walk/field, outdoor, liability insurance in the amounts required by this Code.

(c) It is the responsibility of the licensee to notify the City Treasurer of any change, cancellation or termination of insurance coverage.”

SECTION 6. Section 3.22.060 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

“Standards, rules and regulations. Every person engaging in, conducting, pursuing or operating a haunted house, indoor or haunted walk/field, outdoor within the corporate limits of the city, shall comply with the following standards, rules and regulations covering the operation of the haunted house, indoor or haunted walk/field, outdoor:

(a) Before any license is issued, the building or structure shall be inspected and approved by representatives of the Office of Central Inspection and the Fire Department.

(b) The building or structure shall be of sound structural condition.

(c) Fire protection shall be provided as required by the Fire Department and currently adopted construction codes. This shall include, but not be limited to, fire extinguishers, an approved automatic fire detection system, sprinkler system and an emergency notification system with a prerecorded, approved message. In the discretion of the Fire Chief, a fire watch may be used in lieu of automatic fire detection systems or sprinkler systems when such watch

would adequately protect the safety of the public while on the licensee's premises. The Fire Chief shall determine the type and number of personnel required for the fire watch and the licensee shall be responsible for all personnel and other costs associated with the required fire watch.

(d) Each floor level shall be provided with at least two approved exits, and steps with three or more risers shall be equipped with handrails.

(e) Exit and emergency lighting shall be provided.

(f) All corridors, hallways or walkways that are part of a required primary path of emergency egress from the building or facility shall be a minimum of thirty-six inches wide, with minimum maneuvering clearances at required egress doors as required by the building code. Mazes and/or hallways that are not part of the primary path of emergency egress shall not be less than two feet, six inches wide.

(g) All mazes shall have exit facilities each twenty feet.

(h) All decorations and materials used shall be flame resistant or treated and maintained fire retardant.

(i) All employees must be trained in emergency procedures regarding evacuation of the facility.

(j) All emergency staff shall carry flashlights and know the location of all exits, fire extinguishers, light switches, electrical panels and emergency phones;

(k) Open flames or space heaters are prohibited;

(l) Storage or use of flammable or combustible liquids, gasses and solids is prohibited.

(m) All buildings or structures and the surrounding grounds and premises shall be cleaned, inspected and secured after the operation is closed for the season.

(n) A telephone shall be available on the premises for emergency use at all times when the premises are open to the public.

(o) Off-street parking shall be located on the licensed premises or on an abutting lot immediately adjacent to the structure or facility.

(p) All electrical facilities, wiring, appliances, motors and devices of whatever nature shall be approved by the Office of Central Inspection.

(q) Structural materials, electrical facilities, mechanical devices, decorations, appliances, motors and other devices of whatever nature shall be constructed, used and maintained so that no hazard is created.

(r) Suitable arrangements for restroom facilities and sanitary sewage disposal must be provided. A minimum of one toilet or portable toilet shall be provided for every two hundred people based on the approved maximum premises capacity (occupant load) of the facility. Each facility will have at least one toilet which is handicap accessible.

(s) The property and all structures shall be maintained in a clean and sanitary manner by the owner or operator.

(t) The audience of any haunted house, indoor or haunted walk/field, outdoor must be orderly at all times and it shall be unlawful for any person

attending such haunted house, indoor or haunted walk/field, outdoor to create a disturbance in the audience.

(u) Noise may not exceed the maximum allowable noise levels established in Chapter 7.41 of the Code of the City of Wichita. Noise shall not be of such volume, intensity or duration as to disturb a person or reasonable sensibilities. The licensee, manager or responsible person shall be strictly liable for all noise produced within the licensed facility or structure.

(v) Haunted houses, indoor shall not be opened earlier than noon nor remain open later than two a.m. Haunted walks/fields, outdoor shall not be opened earlier than noon nor remain open later than eleven p.m. Sunday through Thursday or later than twelve a.m. on Friday or Saturday.

(w) Any modifications to plans submitted and approved, at the time of licensing or licensing renewal, must be inspected and approved by the Office of Central Inspection and the Fire Department.”

SECTION 7. Section 3.22.062 of the Code of the City of Wichita, Kansas, is hereby created to read as follows:

“Right of Access. During any hours in which any person is present on the premises, all haunted houses, indoor and haunted walks/fields, outdoor shall be open to inspection by the Wichita Fire Department, Office of Central Inspection officials, Department of Public Works & Utilities officials and Wichita Police Department or other law enforcement agencies.”

SECTION 8. Section 3.22.065 of the Code of the City of Wichita, Kansas, is hereby created to read as follows:

“Premises capacity. It shall be the duty of the Fire Chief and the Superintendent of Central Inspection to determine the number of persons who can be safely accommodated at any one time in any building, premises or location where any haunted house, indoor or haunted walk/field, outdoor is located. The Fire Chief and the Superintendent of Central Inspection shall rate and limit the maximum occupant load of the building, premises or location and furnish a certificate thereof to the owner or operator of such haunted house, indoor or any building or structure which is part of a haunted walk/field, outdoor, which owner shall be required to post such certificate near the main entrance in the facility. Such owner, operator, licensee or responsible person is hereby required to limit the attendance at such haunted house, indoor or haunted walk/field, outdoor to such maximum occupant load capacity as has been determined by the Fire Chief and Superintendent of Central Inspection. It shall be unlawful to post a certificate of maximum occupant load showing a greater capacity than that shown by the Office of Central Inspection and Fire Chief.”

SECTION 9. Section 3.22.067 of the Code of the City of Wichita, Kansas, is hereby created to read as follows:

“Inspection of Premises. It shall be unlawful to conduct or operate any haunted house, indoor or haunted walk/field, outdoor which has not been inspected and approved by the Office of Central Inspection and the Fire Department.”

SECTION 10. Section 3.22.070 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

“Penalty for violation of chapter. Any person who violates any provisions of this chapter, shall be guilty of a misdemeanor and shall be punished by a fine not to exceed five hundred dollars. Each day's violation shall be a separate offense.”

SECTION 11. Section 3.22.080 of the Code of the City of Wichita, Kansas, is hereby created to read as follows:

“Administrative procedures. (a) A haunted house, indoor or haunted walk/field, outdoor license may be suspended, or revoked if:

(1) Any information furnished on the application is incomplete, false or is not updated as required by this Chapter;

(2) Failure to comply with any condition of the haunted house, indoor or haunted walk/field, outdoor license;

(3) The licensee or a manager has become ineligible to hold a license;

(4) The owner, manager, partner, director or other person owning twenty-five percent or more of the stock of a corporate licensee or a partner of a partnership licensee is convicted of any violation or crime which would make them ineligible to obtain a haunted house, indoor or haunted walk/field, outdoor license;

(5) The premises are in violation of the health, building, fire, electrical, mechanical, plumbing, elevator or zoning codes, except as allowed by Section 3.22.020(c) of the City of Wichita regarding the

location of the haunted house, indoor or haunted walk/field, outdoor, or the laws of the State of Kansas;

(6) Evidence of a material variance in the actual plan and design of the premises from the plans submitted pursuant to this Chapter, or from the original design of the premises when initially licensed;

(7) Any law enforcement officer, Fire Department, Public Works & Utilities or Office of Central Inspection official, is refused access to inspect the premises during normal business hours;

(8) The premises are in violation of the maximum occupant load of such building, structure or facility;

(9) The licensee or any employee or agent of the licensee is found to be in violation of the provisions of this chapter or any other ordinance, rule or regulation of the City of Wichita.

For the purposes of this section, '*conviction*' or '*violation*' shall include being placed on diversion or being adjudged guilty upon entering a plea of no contest.

(b) The Superintendent of Central Inspection, Fire Chief or Chief of Police shall provide written notice of the intent to revoke or suspend a haunted house, indoor or haunted walk/field, outdoor license by personal service or by certified mail, return receipt requested. The notice shall be sent to the mailing address of the licensee on file with the City Treasurer. The notice shall provide the effective date of the revocation or suspension of the license. Such notice shall detail the reasons or basis for the revocation or suspension of the license. No

revocation or suspension shall be imposed on less than five days notice to the licensee, and shall specify the rights of the licensee to appeal any such revocation or suspension.”

SECTION 12. Section 3.22.090 of the Code of the City of Wichita, Kansas, is hereby created to read as follows:

“Appeal Procedure. (a) Any applicant or licensee aggrieved by the denial, suspension or revocation of a haunted house, indoor or haunted walk/field, outdoor license may file with the City Clerk a written notice of appeal to the City Council within ten (10) business days of the decision by the Superintendent of Central Inspection, Chief of Police or Fire Chief or their designees. The Notice of Appeal shall specify:

- (1) the name and address of the appellant;
- (2) the date of application;
- (3) the date of the denial, suspension or revocation of the license or application;
- (4) the factual basis for the appeal.

(b) Upon receipt of a complete and timely filed Notice of Appeal, the City Clerk shall schedule a hearing before the City Council, no later than twenty days from the date of the filing of the Notice of Appeal with the City Clerk. Any appeal shall stay the suspension or revocation of the license until the matter is heard by the City Council.

(c) The City Council may approve the denial, suspension or revocation, overrule the denial, suspension or revocation or modify the decision of the Superintendent of Central Inspection, Chief of Police or Fire Chief.

(d) The Council's decision may be appealed to the Eighteenth Judicial District Court of the State of Kansas pursuant to K.S.A. 60-2101 and any amendments thereto. Any such appeal to the District Court shall not stay the denial, revocation, modification or suspension of the license by the City Council.”

SECTION 13. The originals of Sections 3.22.010, 3.22.020, 3.22.040, 3.22.050, 3.22.060 and 3.22.070 of the Code of the City of Wichita, Kansas, are hereby repealed.

SECTION 14. This ordinance shall be included in the Code of the City of Wichita, Kansas, and shall be effective upon its passage and publication once in the official city paper.

PASSED by the governing body of the City of Wichita, Kansas, this 2nd day of August, 2011.

Carl Brewer, Mayor

ATTEST:

Karen Sublett, City Clerk

Approved as to Form:

Gary E. Rebenstorf
Director of Law

First Published in The Wichita Eagle on _____

DELINEATED

07/26/2011

ORDINANCE NO. _____

AN ORDINANCE AMENDING SECTIONS 3.22.010, 3.22.020, 3.22.040, 3.22.060 AND 3.22.070, CREATING SECTIONS 3.22.015, 3.22.035, 3.22.062, 3.22.065, 3.22.067, 3.22.080 AND 3.22.090 OF THE CODE OF THE CITY OF WICHITA, KANSAS, PERTAINING TO HAUNTED HOUSES, HALLOWEEN HOUSES, MYSTERY MANSIONS AND GHOST WALKS AND REPEALING THE ORIGINALS OF SECTIONS 3.22.010, 3.22.020, 3.22.040, 3.22.050, 3.22.060 AND 3.22.070 OF THE CODE OF THE CITY OF WICHITA, KANSAS.

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS:

SECTION 1. Section 3.22.010 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

"Definitions. 'Chief of Police' means the Chief of the Wichita Police Department or his/her designee;

'Fire Chief' means the Director of the Fire Department of the City of Wichita, Kansas, or his/her designee;

'Fire Watch' means a temporary measure intended to ensure continuous and systematic surveillance of a building or portion thereof by one or more qualified individuals or standby personnel when required by the Fire Chief for the purpose of identifying and controlling fire hazards, detecting early signs of unwanted fire, raising an alarm of fire and notifying the Fire Department;

'Halloween Season' means the period of time from September 1st through November 2nd of any calendar year;

A ~~'h~~H~~Haunted h~~House, Indoor~~' halloween house, mystery mansion,' etc.,~~
~~for the purpose of this chapter, includes and~~ means a any indoor permanent or
temporary building, or any other structure or installation facility, or portion
thereof, which provides walkways or any other system that transports passengers
through a facility or course so arranged that the means of egress are not readily
apparent due to theatrical distractions or displays, are not plainly visible due to
low illumination, or are not readily accessible or available due to the type of
course, pathways or method of transportation through the building or structure,
and wherein the public is invited to view, be entertained, scared or and amused by
simulated creations of sound, theatrical displays or distractions, or sight and
feeling of a ghoulish, ghostly, spectral, imaginary and haunting nature in the spirit
of and celebration of the holiday known as Halloween. Unless otherwise
specified, such term shall include temporary and permanent haunted houses,
indoor.

'Haunted Walk/Field, Outdoor' means an attraction similar to haunted
houses, indoor, which occurs primarily outdoors but may include both outdoor or
indoor areas where egress to a public way is not readily identifiable, where the
public is invited to view, be entertained, scared or amused by simulated creations
of sound, theatrical distractions, sight and feeling of a ghoulish, ghostly, spectral,
imaginary and haunting nature in the spirit of and celebration of the holiday
known as Halloween.

‘Permanent Haunted House’ means a ‘Haunted House, Indoor’ that meets the requirements of the Wichita-Sedgwick County Unified Zoning Code as related to “Recreation and Entertainment, Indoor” uses, as well as all City of Wichita building, fire, electrical, elevator, mechanical, plumbing and sewer codes, which may operate year round.

‘Person’ means any individual, firm, association, company, partnership, or other legal entity.

‘Superintendent of Central Inspection’ means the superintendent or person in charge of the Office of Central Inspection of the City or his/her designee

‘Temporary Haunted House, Indoor or Temporary Haunted Walk/Field, Outdoor’ means a haunted house, indoor, or haunted walk/field, outdoor that is operated only during the Halloween Season.”

SECTION 2. Section 3.22.015 of the Code of the City of Wichita, Kansas, is hereby created to read as follows:

“Enforcement of provisions of Code. (a) The Office of Central Inspection of the City of Wichita, the Wichita Police Department, the Wichita Fire Department, the Wichita Department of Public Works & Utilities and the authorized representatives of such departments, shall be responsible for the enforcement of all provisions of this Code.

(b) The provisions of this Code are in addition to any other health, fire, zoning, building code or life safety requirements within the ordinances of the Code of the City of Wichita or laws of the State of Kansas.”

SECTION 3. Section 3.22.020 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

“License or permit required--Fee. (a) It is unlawful for any person to engage, conduct, pursue, ~~or~~ operate, authorize or permit, within the corporate limits of the city, a temporary haunted house, indoor or haunted walk/field, outdoor, halloween house, mystery mansion, etc., as a commercial for-profit enterprise or noncommercial nonprofit enterprise whether or not an admittance fee is charged, without ~~having first obtained~~ obtaining a license ~~therefor~~ from the ~~City license collector~~ Treasurer and ~~paid~~ paying a ~~seasonal~~ license fee of ~~fifty one hundred~~ dollars; ~~provided, however, that~~

In addition to the application fee, an inspection fee not to exceed fifty dollars (\$50.00) will be assessed for each subsequent inspection(s) of the property by the Office of Central Inspection or the Fire Department to determine compliance with the provisions of this Code at the time of licensing. No inspection fee shall be assessed for the initial inspection. Further, the applicant or his/her contractors or other agents are responsible for obtaining any and all permits and inspections required pursuant to the building, fire, electrical, mechanical, plumbing and elevator codes of the City of Wichita.

(b) It is unlawful for any person to engage, conduct, pursue, operate, authorize or permit, within the corporate limits of the city, a permanent haunted house, indoor, whether or not an admittance fee is charged, without first obtaining a license from the City Treasurer and paying a license fee of two hundred fifty dollars;

In addition to the application fee, an inspection fee not to exceed fifty dollars (\$50.00) will be assessed for each subsequent inspection(s) of the property by the Office of Central Inspection or the Fire Department to determine compliance with the provisions of this Code at the time of licensing, or during the annual license period when modifications to egress paths or systems, theatrical distraction or displays, or egress path illumination are made. Such modifications must be inspected and approved by the City of Wichita Fire Department and/or Office of Central Inspection. No inspection fee shall be assessed for the initial annual license inspection. Further, the applicant or his/her contractors or other agents are responsible for obtaining any and all permits and inspections required pursuant to the building, fire, plumbing, sewer, mechanical, elevator and electrical codes of the City of Wichita.

(c) ~~n~~No such license shall be issued for the operation of a haunted house, indoor or haunted walk/field, outdoor, halloween house, mystery mansion, etc., in any residential zoning district except those located in buildings of churches, schools or ~~other institutional uses until the application therefor is approved by the office of central inspection and the fire department~~ upon public property with the written approval of the municipality, department or agency authorized to issue such approval for use of the property.

(d) The license ~~and license fee~~ for temporary haunted houses, indoor or haunted walks/fields, outdoor shall ~~only~~ be ~~good~~ effective for one annual Halloween holiday ~~s~~Season, not to exceed thirty consecutive days before and thirty consecutive days after the Halloween holiday as defined by this chapter.

~~(b) Any haunted house, halloween house, mystery mansion, etc., conducted by a school in a school building on school grounds or property shall be exempt from paying the seasonal license fee of fifty dollars, but shall be required to obtain a license or permit which shall not be subject to approval by the office of central inspection, and fire department; provided, however, the school authorities for the school shall, by written certification, certify that the operation of the haunted house, halloween house, or mystery mansion, etc., is in compliance with all other provisions and requirements of this Code; except for subsections (a), (c), (k) and (l) of Section 3.22.060 of this Code; provided, further, that all structural materials, electrical facilities, mechanical devices, decorations, appliances, motors and other devices of whatever natures shall be constructed, used and maintained so that no hazard is created, and further that all fire prevention precautions have been taken and maintained, and further that adequate parking is available. All other provisions of this Code shall apply.~~

(e) The license for permanent haunted houses, indoor shall be effective for twelve months.”

SECTION 4. Section 3.22.035 of the Code of the City of Wichita is hereby created to read as follows:

“Application. (a) Before any license is granted or issued for a haunted house, indoor or haunted walk/field, outdoor, an application shall be filed with the City Treasurer, setting forth the following facts:

(1) The name, address, date of birth of the applicant and a telephone number where the applicant can be reached between the hours

of eight a.m. and five p.m. and during the hours of operation of the haunted house, indoor or haunted walk/field, outdoor;

(2) Address of the haunted house, indoor or haunted walk/field, outdoor;

(3) Property owner's name, address and phone number;

(4) Dates for which the license is desired;

(5) Hours and days the haunted house, indoor or haunted walk/field, outdoor is to be open and closed;

(6) A statement that the applicant is familiar with the conditions imposed by the terms of this chapter;

(7) Written consent of the property owner;

(8) Site and/or floor plan of all proposed indoor or outdoor permanent or temporary buildings, structures, facilities or property;

(9) Plan for parking and restroom facilities;

(10) Maximum occupant load of the buildings, facilities or areas.

(b) In addition, the applicant must furnish:

(1) The name(s) and address(es) of the owner(s) of the premises where such haunted house, indoor or haunted walk/field, outdoor is located;

(2) The manager or operator and, if a corporation or partnership, all the names and addresses of the officers of such corporation

or partnership and any individual who owns twenty-five (25) percent or more of the stock of such corporation. If the license is to be held by a corporation, the resident officer of the corporation. If the applicant is a partnership, all the names, addresses, social security numbers and dates of birth of all partners of the partnership;

(3) The name, address and date of birth of the applicant, owner, manager or other responsible person of the haunted house, indoor or haunted walk/field, outdoor;

(4) An emergency management plan, consisting of, but not limited to, fire and storm evacuation, patron crowd control and emergency access for police, fire and ambulance;

(5) Detailed plans and drawings of the haunted house, indoor or haunted walk/field, outdoor shall be submitted to the Office of Central Inspection and the Wichita Fire Department, indicating the waiting area for persons seeking admission, the parking areas, all restrooms, emergency exits and all other areas accessible by patrons;

(6) A statement as to whether the applicant has ever had any license denied, revoked or suspended by the City of Wichita or the State of Kansas or any other governmental entity, the reason therefor and the business activity or occupation of the individual subsequent to such suspension, revocation or denial;

(7) A statement as to whether the applicant has ever been convicted of a felony or other crime as set forth in this section which

would make the applicant ineligible to be licensed pursuant to the terms of this Chapter;

(8) A statement that the applicant consents and agrees that any member of the Police Department, Fire Department, Office of Central Inspection and Department of Public Works & Utilities may, at any time, enter and inspect any part of such premises.

(c) A license shall be denied if one or more of the following conditions exist:

(1) Any applicant, owner, officer, manager or director of a corporate applicant, any person owning twenty-five percent (25%) or more of the stock of a corporate applicant, or any partner of a partnership applicant if the partner has, within the preceding ten years, been convicted of or placed on diversion for a:

a. Felony;

b. A crime for which the individual is required to register as a sex offender pursuant to K.S.A. 22-4901, et seq. or laws or statutes in other local, state or federal jurisdictions which require an offender to be registered as a sex offender;

c. For any conviction or diversion of a misdemeanor within the last three years involving:

i. Laws pertaining to any controlled substance(s) prohibited by the Uniform Controlled Substance Act, K.S.A. 65-4104, et seq. or other laws of the

state of Kansas or the United States and amendments thereto;

ii. Prostitution;

iii. Public Indecency;

iv. A sex crime or other person crime as defined by Chapter 21 of the Kansas Statutes Annotated;

v. Any weapons charge.

(2) An applicant is less than eighteen (18) years of age;

(3) The premises do not comply with the health, building, fire, electrical, mechanical, plumbing, elevator and zoning codes of the City of Wichita, except as allowed by the provisions of Section 3.22.020(c) regarding the location of the temporary haunted house, indoor or haunted walk/field, outdoor;

(4) The applicant has knowingly made a false, misleading or fraudulent statement of fact to the City in the application process;

(5) The application is incomplete or if it contains any material misrepresentation.

(6) The applicant, in the last two years has violated the provisions of this Chapter or has had a previous haunted house, indoor or haunted walk/field, outdoor license revoked for failure to comply with the term and conditions of the license or for violations of the ordinances of the City of Wichita.

(d) The application is filed with, and the license fee is paid to the City Treasurer. The license will not be issued until the application has been reviewed and approved by the Chief of Police, the Office of Central Inspection and the Fire Chief.

(e) No permanent haunted house, indoor license will be issued to any facility which is not property zoned for "Recreation and Entertainment, Indoor" pursuant to the Wichita-Sedgwick County Unified Zoning Code. All activities of a permanent haunted house, indoor must occur completely inside the structure or facility licensed as a permanent haunted house, indoor.

(f) Applications for a license or renewal will not be accepted by the City Treasurer less than thirty (30) days prior to the opening of the haunted house, indoor or haunted walk/field, outdoor, or expiration of a current license."

SECTION 5. Section 3.22.040 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

"Liability insurance. (a) No person within the corporate limits of the city shall be licensed to engage in the operation of a haunted house, indoor or haunted field/walk, outdoor until he has deposited and filed with the ~~eCity clerk~~ City Treasurer, ~~for the benefit of the city~~ a public liability insurance policy with coverage of not less than ~~twenty-five~~ five hundred thousand dollars for injury or death to any one person and ~~fifty thousand~~ one million dollars for injury or death to any number of persons in any one accident.

(b) It is unlawful for any person to operate a haunted house, indoor or haunted walk/field, outdoor without obtaining and maintaining in force, during

the operation of the haunted house, indoor or haunted walk/field, outdoor, liability insurance in the amounts required by this Code.

(c) It is the responsibility of the licensee to notify the City Treasurer of any change, cancellation or termination of insurance coverage.”

SECTION 6. Section 3.22.060 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

“Standards, rules and regulations. Every person engaging in, conducting, pursuing or operating ~~within the corporate limits of the city~~ a haunted house, indoor or haunted walk/field, outdoor, ~~halloween house, mystery mansion, etc.,~~ within the corporate limits of the city, shall comply with the following standards, rules and regulations covering the operation of the haunted house, indoor or ~~, halloween house or mystery mansion, etc.~~ haunted walk/field, outdoor:

(a) Before any ~~application for a license permit or special permit~~ is issued, the building or structure shall be inspected and approved by representatives of the ~~Office of~~ Central ~~i~~nspection and the ~~Fire~~ department.

(b) The building or structure shall be of sound structural condition.

(c) Fire protection shall be provided as required by the ~~Fire~~ department and currently adopted construction codes. This shall include, but not be limited to, fire extinguishers, an approved automatic fire detection system, sprinkler system and an emergency notification system with a prerecorded, approved message. In the discretion of the Fire Chief, a fire watch may be used in lieu of automatic fire detection systems or sprinkler systems when such watch would adequately protect the safety of the public while on the licensee’s premises.

The Fire Chief shall determine the type and number of personnel required for the fire watch and the licensee shall be responsible for all personnel and other costs associated with the required fire watch.

(d) Each floor level shall be provided with at least two approved exits, and steps with three ~~four~~ or more risers shall be equipped with handrails.

(e) Exit and Emergency lighting shall be provided.

(f) All ~~mazes and/or~~ corridors, hallways or walkways that are part of a required primary path of emergency egress from the building or facility shall ~~not~~ be a minimum of less than two feet six thirty-six inches wide, with minimum maneuvering clearances at required egress doors as required by the building code. Mazes and/or hallways that are not part of the primary path of emergency egress shall not be less than two feet, six inches wide.

(g) All mazes shall have exit facilities each twenty feet.

(h) All decorations and materials used shall be flame resistant or treated and maintained fire retardant.

(i) All employees must be trained in emergency procedures regarding evacuation of the facility.

(j) All emergency staff shall carry flashlights and know the location of all exits, fire extinguishers, light switches, electrical panels and emergency phones;

(k) Open flames or space heaters are prohibited;

(l) Storage or use of flammable or combustible liquids, gasses and solids is prohibited.

(i) ~~(m)~~ The All buildings or structures and the surrounding grounds and premises shall be cleaned, inspected and secured after the operation is closed for the season.

(j) ~~(n)~~ A telephone shall be available on the premises for emergency use at all times when the premises are open to the public.

(k) ~~(o)~~ In all locations wherever operated, Off-street parking shall be located on the licensed premises or on an abutting lot immediately adjacent to the structure or use except that accessory parking shall not be allowed across arterials or expressway locations facility.

(l) ~~(p)~~ All electrical facilities, wiring, appliances, motors and devices of whatever nature shall be approved by the Office of Central Inspection.

(q) Structural materials, electrical facilities, mechanical devices, decorations, appliances, motors and other devices of whatever nature shall be constructed, used and maintained so that no hazard is created.

(r) Suitable arrangements for restroom facilities and sanitary sewage disposal must be provided. A minimum of one toilet or portable toilet shall be provided for every two hundred people based on the approved maximum premises capacity (occupant load) of the facility. Each facility will have at least one toilet which is handicap accessible.

(s) The property and all structures shall be maintained in a clean and sanitary manner by the owner or operator.

(t) The audience of any haunted house, indoor or haunted walk/field, outdoor must be orderly at all times and it shall be unlawful for any person attending such haunted house, indoor or haunted walk/field, outdoor to create a disturbance in the audience.

(u) Noise may not exceed the maximum allowable noise levels established in Chapter 7.41 of the Code of the City of Wichita. Noise shall not be of such volume, intensity or duration as to disturb a person or reasonable sensibilities. The licensee, manager or responsible person shall be strictly liable for all noise produced within the licensed facility or structure.

(v) Haunted houses, indoor shall not be opened earlier than noon nor remain open later than two a.m. Haunted walks/fields, outdoor shall not be opened earlier than noon nor remain open later than eleven p.m. Sunday through Thursday or later than twelve a.m. on Friday or Saturday.

(w) Any modifications to plans submitted and approved, at the time of licensing or licensing renewal, must be inspected and approved by the Office of Central Inspection and the Fire Department.”

SECTION 7. Section 3.22.062 of the Code of the City of Wichita, Kansas, is hereby created to read as follows:

“Right of Access. During any hours in which any person is present on the premises, all haunted houses, indoor and haunted walks/fields, outdoor shall be open to inspection by the Wichita Fire Department, Office of Central Inspection officials, Department of Public Works & Utilities officials and Wichita Police Department or other law enforcement agencies.”

SECTION 8. Section 3.22.065 of the Code of the City of Wichita, Kansas, is hereby created to read as follows:

“Premises capacity. It shall be the duty of the Fire Chief and the Superintendent of Central Inspection to determine the number of persons who can be safely accommodated at any one time in any building, premises or location where any haunted house, indoor or haunted walk/field, outdoor is located. The Fire Chief and the Superintendent of Central Inspection shall rate and limit the maximum occupant load of the building, premises or location and furnish a certificate thereof to the owner or operator of such haunted house, indoor or any building or structure which is part of a haunted walk/field, outdoor, which owner shall be required to post such certificate near the main entrance in the facility. Such owner, operator, licensee or responsible person is hereby required to limit the attendance at such haunted house, indoor or haunted walk/field, outdoor to such maximum occupant load capacity as has been determined by the Fire Chief and Superintendent of Central Inspection. It shall be unlawful to post a certificate of maximum occupant load showing a greater capacity than that shown by the Office of Central Inspection and Fire Chief.”

SECTION 9. Section 3.22.067 of the Code of the City of Wichita, Kansas, is hereby created to read as follows:

“Inspection of Premises. It shall be unlawful to conduct or operate any haunted house, indoor or haunted walk/field, outdoor which has not been inspected and approved by the Office of Central Inspection and the Fire Department.”

SECTION 10. Section 3.22.070 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

“Penalty for violation of chapter. Any person ~~whether as principal or agent,~~ who violates any provisions of this chapter, shall be guilty of a misdemeanor and shall be punished by a fine of not ~~less than twenty-five dollars nor more than one~~ to exceed five hundred dollars. Each day's violation shall be a separate offense.”

SECTION 11. Section 3.22.080 of the Code of the City of Wichita, Kansas, is hereby created to read as follows:

“Administrative procedures. (a) A haunted house, indoor or haunted walk/field, outdoor license may be suspended, or revoked if:

(1) Any information furnished on the application is incomplete, false or is not updated as required by this Chapter;

(2) Failure to comply with any condition of the haunted house, indoor or haunted walk/field, outdoor license;

(3) The licensee or a manager has become ineligible to hold a license;

(4) The owner, manager, partner, director or other person owning twenty-five percent or more of the stock of a corporate licensee or a partner of a partnership licensee is convicted of any violation or crime which would make them ineligible to obtain a haunted house, indoor or haunted walk/field, outdoor license;

(5) The premises are in violation of the health, building, fire, electrical, mechanical, plumbing, elevator or zoning codes, except as allowed by Section 3.22.020(c) of the City of Wichita regarding the location of the haunted house, indoor or haunted walk/field, outdoor, or the laws of the State of Kansas;

(6) Evidence of a material variance in the actual plan and design of the premises from the plans submitted pursuant to this Chapter, or from the original design of the premises when initially licensed;

(7) Any law enforcement officer, Fire Department, Public Works & Utilities or Office of Central Inspection official, is refused access to inspect the premises during normal business hours;

(8) The premises are in violation of the maximum occupant load of such building, structure or facility;

(9) The licensee or any employee or agent of the licensee is found to be in violation of the provisions of this chapter or any other ordinance, rule or regulation of the City of Wichita.

For the purposes of this section, ‘conviction’ or ‘violation’ shall include being placed on diversion or being adjudged guilty upon entering a plea of no contest.

(b) The Superintendent of Central Inspection, Fire Chief or Chief of Police shall provide written notice of the intent to revoke or suspend a haunted house, indoor or haunted walk/field, outdoor license by personal service or by certified mail, return receipt requested. The notice shall be sent to the mailing

address of the licensee on file with the City Treasurer. The notice shall provide the effective date of the revocation or suspension of the license. Such notice shall detail the reasons or basis for the revocation or suspension of the license. No revocation or suspension shall be imposed on less than five days notice to the licensee, and shall specify the rights of the licensee to appeal any such revocation or suspension.”

SECTION 12. Section 3.22.090 of the Code of the City of Wichita, Kansas, is hereby created to read as follows:

“Appeal Procedure. (a) Any applicant or licensee aggrieved by the denial, suspension or revocation of a haunted house, indoor or haunted walk/field, outdoor license may file with the City Clerk a written notice of appeal to the City Council within ten (10) business days of the decision by the Superintendent of Central Inspection, Chief of Police or Fire Chief or their designees. The Notice of Appeal shall specify:

- (1) the name and address of the appellant;
- (2) the date of application;
- (3) the date of the denial, suspension or revocation of the license or application;
- (4) the factual basis for the appeal.

(b) Upon receipt of a complete and timely filed Notice of Appeal, the City Clerk shall schedule a hearing before the City Council, no later than twenty days from the date of the filing of the Notice of Appeal with the City Clerk. Any

appeal shall stay the suspension or revocation of the license until the matter is heard by the City Council.

(c) The City Council may approve the denial, suspension or revocation, overrule the denial, suspension or revocation or modify the decision of the Superintendent of Central Inspection, Chief of Police or Fire Chief.

(d) The Council's decision may be appealed to the Eighteenth Judicial District Court of the State of Kansas pursuant to K.S.A. 60-2101 and any amendments thereto. Any such appeal to the District Court shall not stay the denial, revocation, modification or suspension of the license by the City Council."

SECTION 13. The originals of Sections 3.22.010, 3.22.020, 3.22.040, 3.22.050, 3.22.060 and 3.22.070 of the Code of the City of Wichita, Kansas, are hereby repealed.

SECTION 14. This ordinance shall be included in the Code of the City of Wichita, Kansas, and shall be effective upon its passage and publication once in the official city paper.

PASSED by the governing body of the City of Wichita, Kansas, this _____ day of _____, 2011.

Carl Brewer, Mayor

ATTEST:

Karen Sublett, City Clerk

Approved as to Form:

Gary E. Rebenstorf
Director of Law

City of Wichita
City Council Meeting
August 2, 2011

TO: Mayor and City Council Members
SUBJECT: 2012/2013 Annual Operating Budget
INITIATED BY: Department of Finance *Kelly Carpenter*
AGENDA: New Business

Recommendation: Receive public comment.

Background: The 2012 – 2013 Proposed Budget has been developed over the past several months based on input from the public and direction from the City Council. Public input has included District Advisory Board meetings, and community meetings. Council direction has included workshop presentations. On July 12, 2011, the City Manager's Proposed Budget was presented to the City Council and a public hearing was held. On July 19, 2011, a public hearing was held and the City Council approved the publication of required budget notices, and set the official budget adoption date (as required by state statute) as August 9, 2011. The Proposed Budget calendar is summarized below:

- ü June 6 - District Advisory Board meetings
- ü June 24 - Workshop presentation
- ü June 29 - Community meeting to discuss the budget
- ü June 30 - WIN budget meeting
- ü July 12 - Official presentation of the proposed operating budget to the City Council; receive public comment;
- ü July 19 - Authorization of the publication notice; Setting of the official budget adoption date; receive public comment
- ü August 2 - Receive public comment
- ü August 9 - Official public hearing; adoption of the 2011 Annual Budget; receive public comment

Analysis: The local operating budget totals approximately \$549 million (which does not include internal service funds, capital projects, grant funds, trust funds or interfund transfers).

Financial Considerations: The Proposed Budget would require a mill levy estimated at 32.272 mills (24.772 for the General Fund and 7.500 for the Debt Service Fund), based on the estimated assessed valuation provided by the Sedgwick County Clerk and the taxes levied in the budget. The total estimated mill levy is unchanged from the 2011 mill levy.

Goal Impact: The 2012 Proposed Budget impacts all goal areas.

Legal Considerations: To comply with State law, the City of Wichita must hold two public hearings, one to set the maximum levy and to set the official budget hearing date (which occurred on July 19, 2011) and one to adopt the budget (scheduled for August 9, 2011).

Recommendation/Action: It is recommended that the City Council receive public comment on the 2012 Proposed Budget.

City of Wichita
City Council Meeting
August 2, 2011

TO: Mayor and City Council Members

SUBJECT: St. Francis Street Improvement, between Douglas and 2nd Street
(District VI)

INITIATED BY: Department of Public Works & Utilities

AGENDA: New Business

.....

Recommendation: Approve the construction budget.

Background: The Capital Improvement Program (CIP) adopted by the City Council includes proposed improvements to St. Francis Street between Douglas and 2nd Street. On March 8, 2011, the City Council approved the design concept for the project and funding to complete construction plans. The approved design concept is based on the Downtown Wichita Streetscape Design Guidelines.

Analysis: The proposed project will reconstruct St. Francis Street, converting it to two-way traffic, and include improvements to both 1st and 2nd Streets, between St. Francis Street and Santa Fe. In addition to the street and sidewalk improvements, the project will also include lighting, signalization, landscaped sidewalks, benches, trash receptacles and bike racks. Construction is planned to begin in early fall and be completed by spring, 2012. St. Francis Street will remain open to one lane south bound traffic at all times. 2nd Street will be closed for eight weeks, with a detour along Washington, Central and Topeka.

Financial Considerations: The City Council previously approved \$297,500 for design of the project. The estimated project cost is \$2,100,000 for a total budget of \$2,397,500. The budget contained in the 2009-2018 Adopted Budget is \$980,000 which was based on minimal improvements to convert St. Francis Street to two-way. The increase in cost is the result of the additional amenities needed to conform to the recently approved Downtown Wichita Streetscape Guidelines. The additional funding is anticipated in the Proposed 2011-2020 CIP. The funding source is General Obligation Bonds.

Goal Impact: This project is in conformance with the Downtown Master Plan and addresses the Core Area and Neighborhood goal.

Legal Considerations: The Law Department has approved the amending ordinance as to form.

Recommendation/Action: It is recommended that the City Council approve the construction budget, place the amending ordinance on first reading, and authorize the necessary signatures.

Attachments: CIP sheet and amending ordinance.

**CAPITAL IMPROVEMENT
PROJECT AUTHORIZATION
CITY OF WICHITA**

USK

To Initiate Project

To Revise Project

X

1. Prepare in triplicate

2. Send original & 2 copies to budget

3. City Manager to sign all copies.

4. File original w/ initiating resolution in City Clerk.

5. Return 2nd copy to initiating department

6. Send 3rd copy to Controller.

1. Initiating Department	2. Initiating Division	3. Date	4. Project Description & Location	
Public Works & Utilities	Eng. & Arch	7/11/2011	St. Francis Douglas-2nd	
5. CIP Project Number	6. Accounting Number	7. CIP Project Date (Year)	8. Approved by WCC Date	
MS-		2011		
9. Estimated Start Date (As Required)	10. Estimated Completion Date (As Required)	11. Project Revised		
12. Project Cost Estimate			12A.	
ITEM	GO	KDOT	*	TOTAL
Right of Way & Design				
Bridge & Culverts				
Paving, grading & const.	\$2,397,500			\$2,397,500
Drainage				
Sanitary Sewer				
Sidewalks				
Water				
Multi-Use Path				
Totals	\$2,397,500			\$2,397,500
Total CIP Amount Budgeted				
Total Prelim. Estimate				
13. Recommendation: Approve the construction budget and place the ascending ordinance on 1st reading				
Division Head	Department Head	Budget Officer	City Manager	
		Date	Date	

	Yes	No
Platting Required	_____	_____
Lot Split	_____	_____
Petition	_____	_____
Ordered by WCC	X	_____

132019

Published in the Wichita Eagle on August 12, 2011

ORDINANCE NO. 49-058

AN ORDINANCE AMENDING ORDINANCE NO. **48-815** OF THE CITY OF WICHITA, KANSAS DECLARING **ST. FRANCIS, BETWEEN DOUGLAS AND 2ND STREET (472-84920)** TO BE A MAIN TRAFFICWAY WITHIN THE CITY OF WICHITA KANSAS; DECLARING THE NECESSITY OF AND AUTHORIZING CERTAIN IMPROVEMENTS TO SAID MAIN TRAFFICWAY; AND SETTING FORTH THE NATURE OF SAID IMPROVEMENTS THE ESTIMATED COSTS THEREOF, AND THE MANNER OF PAYMENT OF THE SAME.

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS;

SECTION 1. Section 2 of Ordinance No. **48-815** is hereby amended to read as follows:

“SECTION 2. It is hereby deemed and declared to be necessary by the governing body of the City of Wichita, Kansas, to make improvements to **St. Francis, between Douglas and 2nd Street (472-84920)** as a main trafficway in the following particulars:

The design and construction of a roadway as necessary for a major traffic facility.”

SECTION 2. SECTION 3 of Ordinance No. **48-815** is hereby amended to read as follows:

“SECTION 3. The cost of the above described improvements is estimated to be **Two Million Three Hundred Ninety-Seven Thousand Five Hundred Dollars (\$2,397,500)** exclusive of the cost of interest on borrowed money, with the total paid by the City of Wichita. Said City cost, when ascertained, shall be borne by the City of Wichita at large by the issuance of General Obligation Bonds under the authority of K.S.A. 12-689.”

SECTION 3. Ordinance No. **48-974**; and Sections 2 and 3 of Ordinance No. **48-815** are here by repealed.

SECTION 4. That the City Clerk shall make proper publication of this ordinance, which shall be published once in the official City paper and which shall be effective from and after said publication.

PASSED by the governing body of the City of Wichita, Kansas, this 9th day of August, 2011.

Carl Brewer, Mayor

ATTEST:

Karen Sublett, City Clerk

(SEAL)

APPROVED AS TO FORM:

Gary E. Rebenstorf, Director of Law

**City of Wichita
City Council Meeting
August 2, 2011**

TO: Mayor and City Council

SUBJECT: Seneca, between I-235 and 31st Street South (District IV)

INITIATED BY: Department of Public Works & Utilities

AGENDA: New Business

Recommendation: Approve the funding.

Background: On May 4, 2004, the City Council approved funding to design improvements to Seneca Street, between I-235 and 31st Street South. District IV Advisory Board sponsored a December 1, 2004 neighborhood meeting on the proposed project. The Board voted 9-0 to recommend approval of the project. On April 6, 2010 the City Council approved the design concept and funding for the right-of-way acquisition.

Analysis: The existing roadway is a four-lane curb and gutter street with an underground storm sewer. The proposed design concept is a five-lane roadway with two through lanes in each direction and a center two-way left turn lane. The storm sewer system will be improved and new sidewalks will be installed on both sides of the street. The intersection at 31st and Seneca will be reconstructed and the signalization will be improved. The intersection at 34th and Seneca will be upgraded to include signalization and brick crosswalks to help serve South High School and the surrounding neighborhood. Construction is planned to begin in the spring of 2012, after relocation of utilities is completed, with an estimated completion in late 2012. One lane of traffic will be maintained in each direction on Seneca and 31st Street South during construction.

Financial Considerations: Estimated cost of the project is \$5,533,871 with \$4,043,871 paid by Federal grants administered by the Kansas Department of Transportation and \$1,490,000 funded by City General Obligation bonds. The City Council previously approved \$310,000 for the design and right-of-way acquisition for a total budget of \$5,843,871, with \$4,043,871 paid by Federal grants and \$1,800,000 by the City. The funding is included in the 2009-2018 CIP. The estimated construction cost for the waterline project is \$100,000 and is included in the water CIP, within the Project W-67 Distribution Mains Replacement. The estimated construction cost for the sanitary sewer rehabilitation project is \$35,000 and is included in the sewer CIP, within the Project S-4 Reconstruction of Old Sanitary Sewers.

Goal Impact: This project addresses the Efficient Infrastructure goal by improving traffic flow through a major transportation corridor.

Legal Considerations: The Law Department has approved the amending ordinance as to form.

Recommendation/Action: It is recommended that the City Council approve the project, place the amending ordinance on first reading and authorize the signing of State/Federal agreements as required.

Attachments: Map, CIP sheet and ordinance.

**CAPITAL IMPROVEMENT
PROJECT AUTHORIZATION
CITY OF WICHITA**

USK

To Initiate Project

To Review Project

X

1. Prepare in triplicate

2. Send original & 2 copies to budget

3. City Manager to sign all copies.

4. file original w/ initiating resolution in City Clerk.

5. Return 2nd copy to initiating department

6. Send 3rd copy to Controller.

1. Initiating Department Public Works & Utilities	2. Initiating Division Eng. & Arch.	3. Date 8/2/2011	4. Project Description & Location Seneca from 1235 to 31st St S	
5. CIP Project Number MS-	6. Accounting Number	7. CIP Project Date (Year) 2011-12	8. Approved by WCC Date	
9. Estimated Start Date As Required	10. Estimated Completion Date As Required	11. Project Revised		
12. Project Cost Estimate				12A.
ITEM	GO	KDOT	*	TOTAL
Right of Way & Design				
Paving, grading & curbs	\$1,000,000	\$1,013,871		\$1,013,871
Bridge & Culverts				
Drainage				
Sanitary Sewer				
Sidewalk				
Water				
Traffic Signals				
Totals	\$1,000,000	\$1,013,871		\$5,843,871
Total CIP Amount Budgeted				
Total Prelim. Estimate				
13. Recommendation: Approve the project and place the amending ordinance on 1st reading				
Division Head	Department Head	Budget Officer	City Manager	
		Date	Date	

Platting Required _____ Yes _____ No

Lot Split _____

Petition _____

Ordered by WCC _____ X _____

132019

First Published in the Wichita Eagle on August 12, 2011

ORDINANCE NO. 49-059

AN ORDINANCE AMENDING ORDINANCE NO. **48-707** OF THE CITY OF WICHITA, KANSAS DECLARING **SENECA, BETWEEN I-235 FREEWAY AND 31ST STREET SOUTH (472-84006)** TO BE A MAIN TRAFFICWAY WITHIN THE CITY OF WICHITA, KANSAS; DECLARING THE NECESSITY OF AND AUTHORIZING CERTAIN IMPROVEMENTS TO SAID MAIN TRAFFICWAY; AND SETTING FORTH THE NATURE OF SAID IMPROVEMENTS, THE ESTIMATED COSTS THEREOF, AND THE MANNER OF PAYMENT OF SAME.

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS:

SECTION 1. SECTION 1 of Ordinance No. **48-707** is hereby amended to read as follows:

“SECTION 1. SECTION 2 of Ordinance No. **46-162** is hereby amended to read as follows:

SECTION 2. it is hereby deemed and declared to be necessary by the governing body of the City of Wichita, Kansas, to make improvement to **Seneca, between I-235 Freeway and 31st Street South (472-84006)** as a main trafficway in the following particulars:

The design, relocation of utilities, acquisition of right-of-way and construction of a roadway as necessary for a major traffic facility.”

SECTION 2. SECTION 2 of Ordinance No. **48-707** is hereby amended to read as follows:

“SECTION 2. SECTION 3 of Ordinance of **46-162** is hereby amended to read as follows:

SECTION 3. The cost of the construction of the above described improvement is estimated to be **Five Million Five Hundred Thirty-Three Thousand Eight Hundred Seventy-One Dollars (\$5,533,871)** exclusive of the cost of interest on borrowed money. To the extent the cost of such improvement is not paid by Federal Grants administered by the Kansas Department of Transportation, the City of Wichita, Kansas is authorized to issue general obligation bonds to pay such costs under the authority of K.S.A. 12-689 up to a maximum of \$5,533,871, exclusive of the cost of interest on borrowed money.”

SECTION 3. The original SECTIONS 1 and 2 of Ordinance No. **48-707** are hereby repealed.

SECTION 4. That the City Clerk shall make proper publication of this ordinance, which shall be published once in the official City paper and which shall be effective from and after said publication.

PASSED by the governing body of the City of Wichita, Kansas, 9th day of August, 2011.

CARL BREWER, MAYOR

ATTEST:

KAREN SUBLETT, CITY CLERK

(SEAL)

APPROVED AS TO FORM:

GARY REBENSTORF, DIRECTOR OF LAW



**PRELIMINARY ESTIMATES
FOR CITY COUNCIL AUGUST 2, 2011**

- a. Storm Water Drain #377 to serve Reeds Cove Medical Campus Addition (east of 127th Street East, south of 21st Street North) (468-84765/751503/485394) Traffic to be maintained during construction using flagpersons and barricades.. (District II) - \$331,000.00
- b. 2011 Contract Maintenance Pedestrian Bridge Replacement (Cheyenne Blvd. & Glen Oaks Dr.) (472-84967/132724/) Traffic to be maintained during construction using flagpersons and barricades.. (District III) - \$100,000.00

City of Wichita
City Council Meeting
August 2, 2011

TO: Mayor and City Council

SUBJECT: Petitions for Street Paving for Berkeley Square 1st Addition, Home Bank & Trust Addition and an unplatted tract (north of 13th, west of Greenwich) (District II)

INITIATED BY: Department of Public Works & Utilities

AGENDA: Consent

Recommendation: Approve the new petitions.

Background: On March 8, 2011, and April 26, 2011, the City Council approved petitions to construct street paving for Berkeley Square 1st Addition, Home Bank & Trust Addition and an unplatted tract. The developer has submitted new petitions to modify the fractional assessments to reflect current market conditions and modify the project budgets based on recent bid prices. The signatures on the petitions represent 100% of the improvement districts.

Analysis: The projects will provide paving improvements for new commercial developments located north of 13th, west of Greenwich.

Financial Considerations: The existing petitions total \$535,000. The new petitions total \$765,000. The funding source is special assessments.

Goal Impact: These projects address the Efficient Infrastructure goal by providing paving improvements for new commercial developments.

Legal Considerations: The Law Department has approved the petitions and resolutions as to form.

Recommendation/Action: It is recommended that the City Council approve the new petitions, adopt the resolutions, and authorize the necessary signatures.

Attachments: Map, CIP sheets, petitions and resolutions.

**CAPITAL IMPROVEMENT
PROJECT AUTHORIZATION
CITY OF WICHITA**

USK

To Initiate Project

To Revise Project

X

1. Prepare in triplicate.
2. Send original & 2 copies to budget.
3. City Manager to sign all copies.
4. File original w/ initiating resolution in City Clerk.
5. Return 2nd copy to initiating department.
6. Send 3rd copy to Controller.

1. Initiating Department	2. Initiating Division	3. Date	4. Project Description & Location	
Public Works & Utilities	Eng & Arch	7/13/2011	Berkley Square Parkway paving for Berkley Square Home bank & Trust, & adjacent tract	
5. CIP Project Number	6. Accounting Number	7. CIP Project Date (Year)	8. Approved by WCC Date	
NI-200424		2011		
9. Estimated Start Date (As Required)	10. Estimated Completion Date (As Required)	11. Project Revised		
12. Project Cost Estimate				12A.
ITEM	CO	SA	EIF	TOTAL
Right of Way & Design				
Bridge & Culverts				
Paving, grading & const.		\$435,000		\$435,000
Drainage				
Sanitary Sewer				
Sidewalks				
Water				
Multi-Use Path				
Totals		\$435,000		\$435,000
Total CIP Amount Budgeted				
Total Prelim. Estimate				
13. Recommendation: Approve the petition and adopt the resolution				
Division Head	Department Head		Budget Officer	City Manager
			Date	Date

	Yes	No
Platting Required	_____	_____
Lot Split	_____	_____
Petition	X	_____
Ordered by WCC	_____	_____

Remarks:

472-84975

**CAPITAL IMPROVEMENT
PROJECT AUTHORIZATION
CITY OF WICHITA**

USK

To Initiate Project

To Revise Project

X

1. Prepare in triplicate.
2. Send original & 2 copies to budget.
3. City Manager to sign all copies.
4. File original w/ initiating resolution in City Clerk.
5. Return 2nd copy to initiating department.
6. Send 3rd copy to Controller.

1. Initiating Department	2. Initiating Division	3. Date	4. Project Description & Location	
Public Works & Utilities	Eng. & Arch	7/13/2011	Claytonfield Street paving for Greenwade Office Park 2nd, Berkeley Square & unplatted tract	
5. CIP Project Number	6. Accounting Number	7. CIP Project Date (Year)	8. Approved by WCC Date	
NI-200424		2011		
9. Estimated Start Date (As Required)	10. Estimated Completion Date (As Required)	11. Project Revised		
12. Project Cost Estimate				12A.
ITEM	CO	SA	EIF	TOTAL
Right of Way & Design				
Bridge & Culverts				
Paving, grading & const.		\$330,000		\$330,000
Drainage				
Sanitary Sewer				
Sidewalks				
Water				
Multi-Use Path				
Totals		\$330,000		\$330,000
Total CIP Amount Budgeted				
Total Prelim. Estimate				
13. Recommendation: Approve the petition and adopt the resolution				
Division Head	Department Head		Budget Officer	City Manager
			Date	Date

	Yes	No
Platting Required	_____	_____
Lot Split	_____	_____
Petition	X	_____
Ordered by WCC	_____	_____

Remarks:

472-84950

First Published in the Wichita Eagle on August 5, 2011

RESOLUTION NO. 11-186

RESOLUTION OF FINDINGS OF ADVISABILITY AND RESOLUTION AUTHORIZING CONSTRUCTING PAVEMENT ON CHESTERFIELD FROM THE NORTH LINE OF 13TH STREET TO 330' NORTH OF THE NORTH LINE OF 13TH STREET (NORTH OF 13TH, WEST OF GREENWICH) 472-84959 IN THE CITY OF WICHITA, KANSAS, PURSUANT TO FINDINGS OF ADVISABILITY MADE BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS.

BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS, THAT THE FOLLOWING FINDINGS AS TO THE ADVISABILITY OF AUTHORIZING CONSTRUCTING PAVEMENT ON CHESTERFIELD FROM THE NORTH LINE OF 13TH STREET TO 330' NORTH OF THE NORTH LINE OF 13TH STREET (NORTH OF 13TH, WEST OF GREENWICH) 472-84959 IN THE CITY OF WICHITA, KANSAS, ARE HEREBY MADE TO-WIT:

SECTION 1. That Resolution No. 11-006 adopted on January 11, 2011 and Resolution No. 11-096 adopted on April 26, 2011 are hereby rescinded.

SECTION 2. That it is necessary and in the public interest to authorize constructing pavement on Chesterfield from the north line of 13th Street to 330' north of the north line of 13th Street (north of 13th, west of Greenwich) 472-84959 Said pavement shall be constructed of the material in accordance with plans and specifications provided by the City Engineer.

SECTION 3. That the cost of said improvements provided for in Section 2 hereof is estimated to be Three Hundred Thirty Thousand Dollars (\$330,000) exclusive of the cost of interest on borrowed money, with 100 percent payable by the improvement district. Said estimated cost as above set forth is hereby increased at the pro-rata rate of 1 percent per month from and after December 1, 2010, exclusive of the costs of temporary financing.

SECTION 4. That all costs of said improvements attributable to the improvement district, when ascertained, shall be assessed against the land lying within the improvement district described as follows:

GREENWICH OFFICE PARK SECOND ADDITION

Lots 1 and 2, Block 1

BERKELEY SQUARE FIRST ADDITION

Lots 1 through 4, Block 1

UNPLATTED TRACT

A tract of land lying within the Southeast Quarter of the Southeast Quarter, of Section 9, Township 27 South, Range 2 East, Wichita, Sedgwick County, Kansas, said tract being more particularly described as follow:

BEGINNING at the southwest corner of Lot 2, Block 1, Home Bank & Trust Company Addition, to Wichita, Sedgwick County, Kansas; thence on a Kansas coordinate system of 1983 south zone grid bearing of S88°53'46"W, 611.46 feet to the east line of Greenwich Office Park Second Addition, an addition to Wichita, Sedgwick County, Kansas; thence along the east line of said Greenwich Office Park Second Addition for the next three (3) course N01°06'14"W, 151.97 feet to a point on a curve to the right; thence along said curve 51.46 feet to a curve to the left, said curve to the right having a central angle of 38°47'53", a radius of 76.00 feet, and a long chord distance of 50.49 feet, bearing N18°17'43"E; thence along said curve to the left 15.59 feet to a curve the right, said curve to the left having a central angle of 13°50'54", a radius of 64.50 feet, and a long chord distance of 15.55 feet, bearing N30°46'12"E; thence along said curve to the right 75.98 feet to a compound curve, said curve to the right having a central angle of 48°22'16", a radius of 90.00 feet, and a long chord distance of 73.75 feet,

bearing N48°01'53"E; thence along said compound curve 367.21 feet to a curve to the left, said compound curve having a central angle of 21°22'54", a radius of 984.00 feet, and a long chord distance of 365.08 feet, bearing N82°54'28"E; thence along said curve to the left 459.61 feet, said curve having a central angle of 13°23'16", a radius of 1967.00 feet, and a long chord distance of 458.57 feet, bearing N86°54'17"E; thence S06°27'22"E, 78.97 feet to the northeast corner of Lot 2, Block 1, said Home Bank & Trust Company Addition; thence along the north line of said addition, S88°53'46"W, 297.21 feet to the northwest corner of said Lot 2; thence along the west line of said Lot 2, S00°54'08"E, 236.44 feet to the POINT OF BEGINNING,

TOGETHER WITH,

BEGINNING at the southeast corner of Lot 2, Block 1, Greenwich Office Park Second Addition, an addition to Wichita, Sedgwick County, Kansas; thence along the east line of said Lot 2, on a platted bearing of N00°54'24"W, 340.51 feet; thence N00°54'24"W, 70.00 feet; thence N88°53'46"E, 479.32 feet; thence S00°48'07"E, 383.98 feet to a point on a non-tangent curve to the left; thence along said curve 384.97 feet to a curve to the right, said curve to the left having a central angle of 21°42'36", a radius of 1016.00 feet, and a long chord distance of 382.67 feet, bearing S82°44'37"W; thence along said curve to the right 71.12 feet to a curve to the left, said curve to the right having a central angle of 45°16'35", a radius of 90.00 feet, and a long chord distance of 69.28 feet, bearing N85°28'23"W; thence along said curve to the right 30.57 feet to the POINT OF BEGINNING, said curve having a central angle of 27°09'17", a radius of 64.50 feet, and a long chord distance of 30.28 feet, bearing N76°24'45"W.

SECTION 5. That the method of apportioning all costs of said improvements attributable to the improvement district to the owners of land liable for assessment therefore shall be on a fractional basis.

The fractional shares provided for herein have been determined on the basis of equal shares being assessed to lots or parcels of substantially comparable size and/or value: Lot 1, Block 1; GREENWICH OFFICE PARK SECOND ADDITION shall pay \$48,300.00 of the total cost payable by the improvement district. Lot 2, Block 1; GREENWICH OFFICE PARK SECOND ADDITION shall pay \$38,000.00 of the total cost payable by the improvement district. Lots 1 and 3, Block 1; BERKELEY SQUARE FIRST ADDITION shall each pay \$21,860.00 of the total remaining cost payable by the improvement district. Lot 2, Block 1; BERKELEY SQUARE FIRST ADDITION shall pay \$17,700.00 of the total remaining cost payable by the improvement district. Lot 4, Block 1; BERKELEY SQUARE FIRST ADDITION shall pay \$39,430.00 of the total remaining cost payable by the improvement district. The UNPLATTED TRACT shall pay 100% of the total remaining cost payable by the improvement district.

In the event all or part of the lots or parcels in the improvement district are replatted before assessments have been levied, the assessments against the replatted area shall be recalculated on the basis of the method of assessment set forth herein. Where the ownership of a single lot or tract is or may be divided into two or more parcels, the assessment to the lot or tract so divided shall be assessed to each ownership or parcel on a square foot basis. Except when driveways are requested to serve a particular tract, lot or parcel, the cost of said driveway shall be in addition to the assessment to said tract, lot, or parcel and shall be in addition to the assessment for other improvements.

SECTION 6. That payment of said assessments may indefinitely be deferred as against those property owners eligible for such deferral available through the Special Assessment Deferral Program.

SECTION 7. That the City Engineer shall prepare plans and specifications for said improvement and a preliminary estimate of cost therefore, which plans, specifications, and a preliminary estimate of cost shall be presented to this Body for its approval.

SECTION 8. Whereas, the Governing Body of the City, upon examination thereof,

considered, found and determined the Petition to be sufficient, having been signed by the owners of record, whether resident or not, of more than Fifty Percent (50%) of the property liable for assessment for the costs of the improvement requested thereby; the advisability of the improvements set forth above is hereby established as authorized by K.S.A. 12-6a01 et seq., as amended.

SECTION 9. Be it further resolved that the above-described improvement is hereby authorized and declared to be necessary in accordance with the findings of the Governing Body as set out in this resolution.

SECTION 10. That the City Clerk shall make proper publication of this resolution, which shall be published once in the official City paper and which shall be effective from and after said publication.

PASSED by the governing body of the City of Wichita, Kansas, this 2nd day of August, 2011.

CARL BREWER, MAYOR

ATTEST:

KAREN SUBLETT, CITY CLERK

(SEAL)

APPROVED AS TO FORM:

GARY E. REBENSTORF, DIRECTOR OF LAW

First Published in the Wichita Eagle on August 5, 2011

RESOLUTION NO. 11-187

RESOLUTION OF FINDINGS OF ADVISABILITY AND RESOLUTION AUTHORIZING CONSTRUCTING PAVEMENT ON BERKELEY SQUARE PARKWAY FROM THE EAST EDGE OF CHESTERFIELD TO THE WEST EDGE OF GREENWICH ROAD (NORTH OF 13TH, WEST OF GREENWICH) 472-84975 IN THE CITY OF WICHITA, KANSAS, PURSUANT TO FINDINGS OF ADVISABILITY MADE BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS.

BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS, THAT THE FOLLOWING FINDINGS AS TO THE ADVISABILITY OF AUTHORIZING CONSTRUCTING PAVEMENT ON BERKELEY SQUARE PARKWAY FROM THE EAST EDGE OF CHESTERFIELD TO THE WEST EDGE OF GREENWICH ROAD (NORTH OF 13TH, WEST OF GREENWICH) 472-84975 IN THE CITY OF WICHITA, KANSAS, ARE HEREBY MADE TO-WIT:

SECTION 1. That Resolution No. 11-039 adopted on March 8, 2011 is hereby rescinded.

SECTION 2. That it is necessary and in the public interest to authorize constructing pavement on Berkeley Square Parkway from the east edge of Chesterfield to the west edge of Greenwich Road (north of 13th, west of Greenwich) 472-84975 Said pavement shall be constructed of the material in accordance with plans and specifications provided by the City Engineer.

SECTION 3. That the cost of said improvements provided for in Section 2 hereof is estimated to Four Hundred Thirty-Five Thousand Dollars (\$435,000) exclusive of the cost of interest on borrowed money, with 100 percent payable by the improvement district. Said estimated cost as above set forth is hereby increased at the pro-rata rate of 1 percent per month from and after February 1, 2011, exclusive of the costs of temporary financing.

SECTION 4. That all costs of said improvements attributable to the improvement district, when ascertained, shall be assessed against the land lying within the improvement district described as follows:

BERKELEY SQUARE FIRST ADDITION

Lots 1 through 4, Block 1

UNPLATTED TRACT

A tract of land lying within the Southeast Quarter of the Southeast Quarter, of Section 9, Township 27 South, Range 2 East, Wichita, Sedgwick County, Kansas, said tract being more particularly described as follow:

BEGINNING at the southwest corner of Lot 2, Block 1, Home Bank & Trust Company Addition, to Wichita, Sedgwick County, Kansas; thence on a Kansas coordinate system of 1983 south zone grid bearing of S88°53'46"W, 611.46 feet to the east line of Greenwich Office Park Second Addition, an addition to Wichita, Sedgwick County, Kansas; thence along the east line of said Greenwich Office Park Second Addition for the next three (3) course N01°06'14"W, 151.97 feet to a point on a curve to the right; thence along said curve 51.46 feet to a curve to the left, said curve to the right having a central angle of 38°47'53", a radius of 76.00 feet, and a long chord distance of 50.49 feet, bearing N18°17'43"E; thence along said curve to the left 15.59 feet to a curve the right, said curve to the left having a central angle of 13°50'54", a radius of 64.50 feet, and a long chord distance of 15.55 feet, bearing N30°46'12"E; thence along said curve to the right 75.98 feet to a compound curve, said curve to the right having a central angle of 48°22'16", a radius of 90.00 feet, and a long chord distance of 73.75 feet, bearing N48°01'53"E; thence along said compound curve 367.21 feet to a curve to the left, said compound curve having a central angle of 21°22'54", a radius of 984.00 feet, and a long chord distance

of 365.08 feet, bearing N82°54'28"E; thence along said curve to the left 459.61 feet, said curve having a central angle of 13°23'16", a radius of 1967.00 feet, and a long chord distance of 458.57 feet, bearing N86°54'17"E; thence S06°27'22"E, 78.97 feet to the northeast corner of Lot 2, Block 1, said Home Bank & Trust Company Addition; thence along the north line of said addition, S88°53'46"W, 297.21 feet to the northwest corner of said Lot 2; thence along the west line of said Lot 2, S00°54'08"E, 236.44 feet to the POINT OF BEGINNING,

TOGETHER WITH,

BEGINNING at the southeast corner of Lot 2, Block 1, Greenwich Office Park Second Addition, an addition to Wichita, Sedgwick County, Kansas; thence along the east line of said Lot 2, on a platted bearing of N00°54'24"W, 340.51 feet; thence N00°54'24"W, 70.00 feet; thence N88°53'46"E, 479.32 feet; thence S00°48'07"E, 383.98 feet to a point on a non-tangent curve to the left; thence along said curve 384.97 feet to a curve to the right, said curve to the left having a central angle of 21°42'36", a radius of 1016.00 feet, and a long chord distance of 382.67 feet, bearing S82°44'37"W; thence along said curve to the right 71.12 feet to a curve to the left, said curve to the right having a central angle of 45°16'35", a radius of 90.00 feet, and a long chord distance of 69.28 feet, bearing N85°28'23"W; thence along said curve to the right 30.57 feet to the POINT OF BEGINNING, said curve having a central angle of 27°09'17", a radius of 64.50 feet, and a long chord distance of 30.28 feet, bearing N76°24'45"W.

HOME BANK & TRUST ADDITION
Lot 2, Block 1

SECTION 5. That the method of apportioning all costs of said improvements attributable to the improvement district to the owners of land liable for assessment therefore shall be on a fractional basis.

The fractional shares provided for herein have been determined on the basis of equal shares being assessed to lots or parcels of substantially comparable size and/or value: Lots 1 and 3, Block 1; BERKELEY SQUARE FIRST ADDITION shall each pay \$38,460.00 of the total cost payable by the improvement district. Lot 2, Block 1; BERKELEY SQUARE FIRST ADDITION shall pay \$31,570.00 of the total cost payable by the improvement district. Lot 4, Block 1; BERKELEY SQUARE FIRST ADDITION shall pay \$70,315.00 of the total cost payable by the improvement district. The UNPLATTED TRACT shall pay 79% of the total remaining cost payable by the improvement district. Lot 2, Block 1; HOME BANK & TRUST ADDITION shall pay 21% of the total remaining cost payable by the improvement district.

In the event all or part of the lots or parcels in the improvement district are replatted before assessments have been levied, the assessments against the replatted area shall be recalculated on the basis of the method of assessment set forth herein. Where the ownership of a single lot or tract is or may be divided into two or more parcels, the assessment to the lot or tract so divided shall be assessed to each ownership or parcel on a square foot basis. Except when driveways are requested to serve a particular tract, lot or parcel, the cost of said driveway shall be in addition to the assessment to said tract, lot, or parcel and shall be in addition to the assessment for other improvements.

SECTION 6. That payment of said assessments may indefinitely be deferred as against those property owners eligible for such deferral available through the Special Assessment Deferral Program.

SECTION 7. That the City Engineer shall prepare plans and specifications for said improvement and a preliminary estimate of cost therefore, which plans, specifications, and a preliminary estimate of cost shall be presented to this Body for its approval.

SECTION 8. Whereas, the Governing Body of the City, upon examination thereof, considered, found and determined the Petition to be sufficient, having been signed by the owners of record, whether resident or not, of more than Fifty Percent (50%) of the property liable for assessment for the costs of the improvement requested thereby; the advisability of the improvements set forth above

is hereby established as authorized by K.S.A. 12-6a01 et seq., as amended.

SECTION 9. Be it further resolved that the above-described improvement is hereby authorized and declared to be necessary in accordance with the findings of the Governing Body as set out in this resolution.

SECTION 10. That the City Clerk shall make proper publication of this resolution, which shall be published once in the official City paper and which shall be effective from and after said publication.

PASSED by the governing body of the City of Wichita, Kansas, this 2nd day of August, 2011.

CARL BREWER, MAYOR

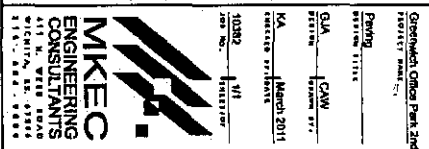
ATTEST:

KAREN SUBLETT, CITY CLERK

(SEAL)

APPROVED AS TO FORM:

GARY E. REBENSTORF, DIRECTOR OF LAW



NORTH

RECEIVED

JUN 23 '11

CITY CLERK OFFICE

PAVING PETITION

To the Mayor and City Council
Wichita, Kansas

Dear Council Members:

1. We, the undersigned owners of record as below designated, of Lots, Parcels, and Tracts of real property described as follows:

BERKELEY SQUARE FIRST ADDITION

472-84975

Lots 1 through 4, Block 1;

UNPLATTED TRACT

A tract of land lying within the Southeast Quarter of the Southeast Quarter, of Section 9, Township 27 South, Range 2 East, Wichita, Sedgwick County, Kansas, said tract being more particularly described as follow:

BEGINNING at the southwest corner of Lot 2, Block 1, Home Bank & Trust Company Addition, to Wichita, Sedgwick County, Kansas; thence on a Kansas coordinate system of 1983 south zone grid bearing of S88°53'46"W, 611.46 feet to the east line of Greenwich Office Park Second Addition, an addition to Wichita, Sedgwick County, Kansas; thence along the east line of said Greenwich Office Park Second Addition for the next three (3) course N01°06'14"W, 151.97 feet to a point on a curve to the right; thence along said curve 51.46 feet to a curve to the left, said curve to the right having a central angle of 38°47'53", a radius of 76.00 feet, and a long chord distance of 50.49 feet, bearing N18°17'43"E; thence along said curve to the left 15.59 feet to a curve the right, said curve to the left having a central angle of 13°50'54", a radius of 64.50 feet, and a long chord distance of 15.55 feet, bearing N30°46'12"E; thence along said curve to the right 75.98 feet to a compound curve, said curve to the right having a central angle of 48°22'16", a radius of 90.00 feet, and a long chord distance of 73.75 feet, bearing N48°01'53"E; thence along said compound curve 367.21 feet to a curve to the left, said compound curve having a central angle of 21°22'54", a radius of 984.00 feet, and a long chord distance of 365.08 feet, bearing N82°54'28"E; thence along said curve to the left 459.61 feet, said curve having a central angle of 13°23'16", a radius of 1967.00 feet, and a long chord distance of 458.57 feet, bearing N86°54'17"E; thence S06°27'22"E, 78.97 feet to the northeast corner of Lot 2, Block 1, said Home Bank & Trust Company Addition; thence along the north line of said addition, S88°53'46"W, 297.21 feet to the northwest corner of said Lot 2; thence along the west line of said Lot 2, S00°54'08"E, 236.44 feet to the POINT OF BEGINNING,

TOGETHER WITH,

BEGINNING at the southeast corner of Lot 2, Block 1, Greenwich Office Park Second Addition, an addition to Wichita, Sedgwick County, Kansas; thence along the east line of said Lot 2, on a platted bearing of N00°54'24"W, 340.51 feet; thence N00°54'24"W, 70.00 feet; thence N88°53'46"E, 479.32 feet; thence S00°48'07"E, 383.98 feet to a point on a non-tangent curve to the left; thence along said curve 384.97 feet to a curve to the right, said curve to the left having a central angle of 21°42'36", a radius of 1016.00 feet, and a long chord distance of 382.67 feet, bearing S82°44'37"W; thence along said curve to the right 71.12 feet to a curve to the left, said curve to the right having a central angle of 45°16'35", a radius of 90.00 feet, and a long chord distance of 69.28 feet, bearing N85°28'23"W; thence along said curve to the right 30.57 feet to the POINT OF BEGINNING, said curve having a central angle of 27°09'17", a radius of 64.50 feet, and a long chord distance of 30.28 feet, bearing N76°24'45"W.

HOME BANK & TRUST ADDITION

Lot 2, Block 1;

Berkeley Square First Addition – Paving Petition

GJA/cw 10572 REPETITION

Page 1

do hereby petition, pursuant to the provisions of K.S.A. 12-6a01 et seq., as amended, as follows:

- (a) That there be constructed within the area described above, pavement on Berkeley Square Parkway from the east edge of Chesterfield to the west edge of Greenwich Road. That said pavement between aforesaid limits be constructed with plans and specifications to be furnished by the City Engineer of the City of Wichita, Kansas. Drainage to be installed where necessary.
- (b) That the estimated and probable cost of the foregoing improvement is Four Hundred Thirty Five Thousand Dollars (\$435,000.00) exclusive of the cost of interest on borrowed money, with 100 percent payable by the improvement district. Said estimated cost as above set forth may be increased to include temporary interest or finance costs incurred during the course of design and construction of the project, and also may be increased at the pro rata rate of 1 percent per month from and after February 1, 2011.
- (c) That the land or area above described be constituted as an improvement district against which shall be assessed 100 percent of the total actual cost of the improvement for which the improvement district is liable.

If this improvement is abandoned, altered and/or constructed privately in part or whole that precludes building this improvement under the authority of this petition, any costs that the City of Wichita incurs shall be assessed to the property described above in accordance with the terms of the petition. In addition, if the improvement is abandoned at any state during the design and/or construction of the improvement or if it is necessary for the City of Wichita to redesign, repair or reconstruct the improvement after its initial design and/or construction because the design or construction does not meet the requirements of the City, then such costs associated with the redesign, repair or reconstruction of said improvement shall be assessed to the property described above in accordance with the terms of this petition.

- (d) That the method of assessment of all costs of the improvement for which the improvement district shall be liable shall be on a fractional basis. The fractional shares provided for herein have been determined on the basis of equal shares being assessed to lots or parcels of substantially comparable size and/or value:

Lots 1 & 3, Block 1; Berkeley Square First Addition shall each pay \$38,460.00 of the total cost payable by the improvement district. Lot 2, Block 1; Berkeley Square First Addition shall pay \$31,570.00 of the total cost payable by the improvement district. Lot 4, Block 1; Berkeley Square First Addition shall pay \$70,315.00 of the total cost payable by the improvement district. The Unplatted Tract shall pay 79% of the total remaining cost payable by the improvement district. Lot 2, Block 1; Home Bank & Trust Addition shall pay

21% of the total remaining cost payable by the improvement district.

In the event all or part of the lots or parcels in the improvement district are replatted before assessments have been levied, the assessments against the replatted area shall be recalculated on the basis of the method of assessment set forth herein. Where the ownership of a single lot or tract is or may be divided into two or more parcels, the assessment to the lot or tract so divided shall be assessed to each ownership or parcel on a square foot basis.

Except when driveways are requested to serve a particular tract, lot, or parcel, the cost of said driveway shall be in addition to the assessment to said tract, lot, or parcel and shall be in addition to the assessment for other improvements.

2. It is requested that the improvements hereby petitioned be made without notice and hearing, which but for this request, would be required by K.S.A. 12-6a04. This petition may be combined with other petitions of similar nature in order to form one public improvement project.

3. The petition is submitted pursuant to subsection (c) of K.S.A. 12-6a04, and amendments thereto and as owners of 100% of the properties proposed to be included in the improvement district, we acknowledge that the proposed improvement district does not include all properties which may be deemed to benefit from the proposed improvement.

4. That names may not be withdrawn from this petition by the signers thereof after the Governing body commences consideration of the petition or later than seven (7) days after filing, whichever comes first.

5. That when this petition has been filed with the City Clerk and it has been certified that the signatures thereon are according to the records of the Register of Deeds of Sedgwick County, Kansas, the petition may be found sufficient if signed by either (1) a majority of the resident owners of record of property liable for assessment under the proposal, or (2) the resident owners of record of more than one-half of the area liable for assessment under the proposal, or (3) the owners of record (whether resident or not) of more than one-half of the area liable for assessment under the proposal. The Governing Body is requested to proceed in the manner provided by statute to the end that the petitioned improvements may be expeditiously completed and placed in use.

WITNESS our signatures attached with respect to each of which is indicated the property owned and the date of signing.

LEGAL DESCRIPTION	SIGNATURE	DATE
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BERKELEY SQUARE FIRST ADDITION

Lots 1 through 4, Block 1; Berkeley Square First Addition, an addition to Wichita, Sedgwick County, Kansas.

GREENWICH 13, LLC

A Kansas Limited Liability Company

By: _____


Laham Development Co., LLC
George E. Laham, II, Manager

WITNESS our signatures attached with respect to each of which is indicated the property owned and the date of signing.

LEGAL DESCRIPTION

SIGNATURE

DATE

UNPLATTED TRACT

See legal description, page 1

GREENWICH 13, LLC

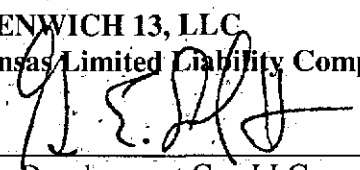
A Kansas Limited Liability Company

By: _____

Laham Development Co., LLC

George E. Laham, II, Manager

WITNESS our signatures attached with respect to each of which is indicated the property owned and the date of signing.

LEGAL DESCRIPTION	SIGNATURE	DATE
<u>HOME BANK & TRUST ADDITION</u> Lot 2, Block 1	<u>GREENWICH 13, LLC</u> A Kansas Limited Liability Company  By: _____ Laham Development Co., LLC George E. Laham, II, Manager	

AFFIDAVIT

The undersigned, being first duly sworn on his oath, states: That he circulated the attached petition and that the signatures thereon are the genuine signatures of the persons they purport to be to the best of his knowledge and belief, being signed either in the presences of the undersigned or in the presence of one of the resident owners whose signature appears on the petition.

MKEC Engineering Consultants, Inc.
Company

Cynthia X. Wonnack
Authorized Signature

411 N. Webb Road

Wichita, Kansas
Address

316-684-9600
Telephone

Sworn to and subscribed before me this 23rd day of June 20 11.

Deborah A. Jodloz
Deputy City Clerk



132019

First Published in the Wichita Eagle on

RESOLUTION NO. _____

RESOLUTION OF FINDINGS OF ADVISABILITY AND RESOLUTION AUTHORIZING CONSTRUCTING PAVEMENT ON BERKELEY SQUARE PARKWAY FROM THE EAST EDGE OF CHESTERFIELD TO THE WEST EDGE OF GREENWICH ROAD (NORTH OF 13TH, WEST OF GREENWICH) 472-84975 IN THE CITY OF WICHITA, KANSAS, PURSUANT TO FINDINGS OF ADVISABILITY MADE BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS.

BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS, THAT THE FOLLOWING FINDINGS AS TO THE ADVISABILITY OF AUTHORIZING CONSTRUCTING PAVEMENT ON BERKELEY SQUARE PARKWAY FROM THE EAST EDGE OF CHESTERFIELD TO THE WEST EDGE OF GREENWICH ROAD (NORTH OF 13TH, WEST OF GREENWICH) 472-84975 IN THE CITY OF WICHITA, KANSAS, ARE HEREBY MADE TO-WIT:

SECTION 1. That Resolution No. 11-039 adopted on **March 8, 2011** is hereby rescinded.

SECTION 2. That it is necessary and in the public interest to authorize constructing pavement on **Berkeley Square Parkway from the east edge of Chesterfield to the west edge of Greenwich Road (north of 13th, west of Greenwich) 472-84975** Said pavement shall be constructed of the material in accordance with plans and specifications provided by the City Engineer.

SECTION 3. That the cost of said improvements provided for in Section 2 hereof is estimated to **Four Hundred Thirty-Five Thousand Dollars (\$435,000)** exclusive of the cost of interest on borrowed money, with **100** percent payable by the improvement district. Said estimated cost as above set forth is hereby increased at the pro-rata rate of 1 percent per month from and after **February 1, 2011**, exclusive of the costs of temporary financing.

SECTION 4. That all costs of said improvements attributable to the improvement district, when ascertained, shall be assessed against the land lying within the improvement district described as follows:

BERKELEY SQUARE FIRST ADDITION

Lots 1 through 4, Block 1

UNPLATTED TRACT

A tract of land lying within the Southeast Quarter of the Southeast Quarter, of Section 9, Township 27 South, Range 2 East, Wichita, Sedgwick County, Kansas, said tract being more particularly described as follow:

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TOGETHER WITH,

BEGINNING at the southeast corner of Lot 2, Block 1, Greenwich Office Park Second Addition, an addition to Wichita, Sedgwick County, Kansas; thence along the east line of said Lot 2, on a platted bearing of N00°54'24"W, 340.51 feet; thence N00°54'24"W, 70.00 feet; thence N88°53'46"E, 479.32 feet; thence S00°48'07"E, 383.98 feet to a point on a non-tangent curve to the left; thence along said curve 384.97 feet to a curve to the right, said curve to the left having a central angle of 21°42'36", a radius of 1016.00 feet, and a long chord distance of 382.67 feet, bearing S82°44'37"W; thence along said curve to the right 71.12 feet to a curve to the left, said curve to the right having a central angle of 45°16'35", a radius of 90.00 feet, and a long chord distance of 69.28 feet, bearing N85°28'23"W; thence along said curve to the right 30.57 feet to the POINT OF BEGINNING, said curve having a central angle of 27°09'17", a radius of 64.50 feet, and a long chord distance of 30.28 feet, bearing N76°24'45"W.

HOME BANK & TRUST ADDITION

Lot 2, Block 1

SECTION 5. That the method of apportioning all costs of said improvements attributable to the improvement district to the owners of land liable for assessment therefore shall be on a **fractional** basis.

The fractional shares provided for herein have been determined on the basis of equal shares being assessed to lots or parcels of substantially comparable size and/or value: Lots 1 and 3, Block 1; BERKELEY SQUARE FIRST ADDITION shall each pay \$38,460.00 of the total cost payable by the improvement district. Lot 2, Block 1; BERKELEY SQUARE FIRST ADDITION shall pay \$31,570.00 of the total cost payable by the improvement district. Lot 4, Block 1; BERKELEY SQUARE FIRST ADDITION shall pay \$70,315.00 of the total cost payable by the improvement district. The UNPLATTED TRACT shall pay 79% of the total remaining cost payable by the improvement district. Lot 2, Block 1; HOME BANK & TRUST ADDITION shall pay 21% of the total remaining cost payable by the improvement district.

In the event all or part of the lots or parcels in the improvement district are replatted before assessments have been levied, the assessments against the replatted area shall be recalculated on the basis of the method of assessment set forth herein. Where the ownership of a single lot or tract is or may be divided into two or more parcels, the assessment to the lot or tract so divided shall be assessed to each ownership or parcel on a square foot basis. Except when driveways are requested to serve a particular tract, lot or parcel, the cost of said driveway shall be in addition to the assessment to said tract, lot, or parcel and shall be in addition to the assessment for other improvements.

SECTION 6. That payment of said assessments may indefinitely be deferred as against those property owners eligible for such deferral available through the Special Assessment Deferral Program.

SECTION 7. That the City Engineer shall prepare plans and specifications for said improvement and a preliminary estimate of cost therefore, which plans, specifications, and a preliminary estimate of cost shall be presented to this Body for its approval.

SECTION 8. Whereas, the Governing Body of the City, upon examination thereof, considered, found and determined the Petition to be sufficient, having been signed by the owners of record, whether resident or not, of more than Fifty Percent (50%) of the property liable for assessment for the costs of the improvement requested thereby; the advisability of the improvements set forth above is hereby established as authorized by K.S.A. 12-6a01 et seq., as amended.

SECTION 9. Be it further resolved that the above-described improvement is hereby authorized and declared to be necessary in accordance with the findings of the Governing Body as set out in this resolution.

SECTION 10. That the City Clerk shall make proper publication of this resolution, which shall be published once in the official City paper and which shall be effective from and after said publication.

PASSED by the governing body of the City of Wichita, Kansas, this ____ day of _____, 2011.

CARL BREWER, MAYOR

ATTEST:

KAREN SUBLETT, CITY CLERK

(SEAL)

APPROVED AS TO FORM:

GARY E. REBENSTORF, DIRECTOR OF LAW

RECEIVED

JUN 23 '11

PAVING PETITION

CITY CLERK OFFICE

To the Mayor and City Council
Wichita, Kansas

Dear Council Members:

1. We, the undersigned owners of record as below designated, of Lots, Parcels, and Tracts of real property described as follows:

GREENWICH OFFICE PARK SECOND ADDITION

Lots 1 & 2, Block 1;

BERKELEY SQUARE FIRST ADDITION

Lots 1 through 4, Block 1;

472-84959

UNPLATTED TRACT

A tract of land lying within the Southeast Quarter of the Southeast Quarter, of Section 9, Township 27 South, Range 2 East, Wichita, Sedgwick County, Kansas, said tract being more particularly described as follow:
BEGINNING at the southwest corner of Lot 2, Block 1, Home Bank & Trust Company Addition, to Wichita, Sedgwick County, Kansas; thence on a Kansas coordinate system of 1983 south zone grid bearing of S88°53'46"W, 611.46 feet to the east line of Greenwich Office Park Second Addition, an addition to Wichita, Sedgwick County, Kansas; thence along the east line of said Greenwich Office Park Second Addition for the next three (3) course N01°06'14"W, 151.97 feet to a point on a curve to the right; thence along said curve 51.46 feet to a curve to the left, said curve to the right having a central angle of 38°47'53", a radius of 76.00 feet, and a long chord distance of 50.49 feet, bearing N18°17'43"E; thence along said curve to the left 15.59 feet to a curve the right, said curve to the left having a central angle of 13°50'54", a radius of 64.50 feet, and a long chord distance of 15.55 feet, bearing N30°46'12"E; thence along said curve to the right 75.98 feet to a compound curve, said curve to the right having a central angle of 48°22'16", a radius of 90.00 feet, and a long chord distance of 73.75 feet, bearing N48°01'53"E; thence along said compound curve 367.21 feet to a curve to the left, said compound curve having a central angle of 21°22'54", a radius of 984.00 feet, and a long chord distance of 365.08 feet, bearing N82°54'28"E; thence along said curve to the left 459.61 feet, said curve having a central angle of 13°23'16", a radius of 1967.00 feet, and a long chord distance of 458.57 feet, bearing N86°54'17"E; thence S06°27'22"E, 78.97 feet to the northeast corner of Lot 2, Block 1, said Home Bank & Trust Company Addition; thence along the north line of said addition, S88°53'46"W, 297.21 feet to the northwest corner of said Lot 2; thence along the west line of said Lot 2, S00°54'08"E, 236.44 feet to the POINT OF BEGINNING,

TOGETHER WITH,

BEGINNING at the southeast corner of Lot 2, Block 1, Greenwich Office Park Second Addition, an addition to Wichita, Sedgwick County, Kansas; thence along the east line of said Lot 2, on a platted bearing of N00°54'24"W, 340.51 feet; thence N00°54'24"W, 70.00 feet; thence N88°53'46"E, 479.32 feet; thence S00°48'07"E, 383.98 feet to a point on a non-tangent curve to the left; thence along said curve 384.97 feet to a curve to the right, said curve to the left having a central angle of 21°42'36", a radius of 1016.00 feet, and a long chord distance of 382.67 feet, bearing S82°44'37"W; thence along said curve to the right 71.12 feet to a curve to the left, said curve to the right having a central angle of 45°16'35", a radius of 90.00 feet, and a long chord distance of 69.28 feet, bearing N85°28'23"W; thence along said curve to the right 30.57 feet to the POINT OF BEGINNING, said curve having a central angle of 27°09'17", a radius of 64.50 feet, and a long chord distance of 30.28 feet, bearing N76°24'45"W.

do hereby petition, pursuant to the provisions of K.S.A. 12-6a01 et seq., as amended, as follows:

- (a) That there be constructed within the area described above, pavement on Chesterfield from the north line of 13th Street to 330' North of the north line of 13th Street. That said pavement between aforesaid limits be constructed with plans and specifications to be furnished by the City Engineer of the City of Wichita, Kansas. Drainage to be installed where necessary.
- (b) That the estimated and probable cost of the foregoing improvement is Three Hundred Thirty Thousand Dollars (\$330,000.00) exclusive of the cost of interest on borrowed money, with 100 percent payable by the improvement district. Said estimated cost as above set forth may be increased to include temporary interest or finance costs incurred during the course of design and construction of the project, and also may be increased at the pro rata rate of 1 percent per month from and after December 1, 2010.
- (c) That the land or area above described be constituted as an improvement district against which shall be assessed 100 percent of the total actual cost of the improvement for which the improvement district is liable.

If this improvement is abandoned, altered and/or constructed privately in part or whole that precludes building this improvement under the authority of this petition, any costs that the City of Wichita incurs shall be assessed to the property described above in accordance with the terms of the petition. In addition, if the improvement is abandoned at any state during the design and/or construction of the improvement or if it is necessary for the City of Wichita to redesign, repair or reconstruct the improvement after its initial design and/or construction because the design or construction does not meet the requirements of the City, then such costs associated with the redesign, repair or reconstruction of said improvement shall be assessed to the property described above in accordance with the terms of this petition.

- (d) That the method of assessment of all costs of the improvement for which the improvement district shall be liable shall be on a fractional basis. The fractional shares provided for herein have been determined on the basis of equal shares being assessed to lots or parcels of substantially comparable size and/or value:

Lot 1, Block 1; Greenwich Office Park Second Addition shall pay \$48,300.00 of the total cost payable by the improvement district. Lot 2, Block 1; Greenwich Office Park Second Addition shall pay \$38,000.00 of the total cost payable by the improvement district. Lots 1 and 3, Block 1; Berkeley Square First Addition shall each pay \$21,860.00 of the total remaining cost payable by the improvement district. Lot 2, Block 1; Berkeley Square First Addition shall pay \$17,700.00 of the total remaining cost payable by the improvement

district. Lot 4, Block 1; Berkeley Square First Addition shall pay \$39,430.00 of the total remaining cost payable by the improvement district. The Unplatted Tract shall pay 100% of the total remaining cost payable by the improvement district.

In the event all or part of the lots or parcels in the improvement district are replatted before assessments have been levied, the assessments against the replatted area shall be recalculated on the basis of the method of assessment set forth herein. Where the ownership of a single lot or tract is or may be divided into two or more parcels, the assessment to the lot or tract so divided shall be assessed to each ownership or parcel on a square foot basis.

Except when driveways are requested to serve a particular tract, lot, or parcel, the cost of said driveway shall be in addition to the assessment to said tract, lot, or parcel and shall be in addition to the assessment for other improvements.

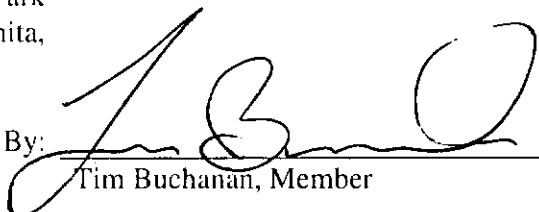
2. It is requested that the improvements hereby petitioned be made without notice and hearing, which but for this request, would be required by K.S.A. 12-6a04. This petition may be combined with other petitions of similar nature in order to form one public improvement project.

3. The petition is submitted pursuant to subsection (c) of K.S.A. 12-6a04, and amendments thereto and as owners of 100% of the properties proposed to be included in the improvement district, we acknowledge that the proposed improvement district does not include all properties which may be deemed to benefit from the proposed improvement.

4. That names may not be withdrawn from this petition by the signers thereof after the Governing body commences consideration of the petition or later than seven (7) days after filing, whichever comes first.

5. That when this petition has been filed with the City Clerk and it has been certified that the signatures thereon are according to the records of the Register of Deeds of Sedgwick County, Kansas, the petition may be found sufficient if signed by either (1) a majority of the resident owners of record of property liable for assessment under the proposal, or (2) the resident owners of record of more than one-half of the area liable for assessment under the proposal, or (3) the owners of record (whether resident or not) of more than one-half of the area liable for assessment under the proposal. The Governing Body is requested to proceed in the manner provided by statute to the end that the petitioned improvements may be expeditiously completed and placed in use.

WITNESS our signatures attached with respect to each of which is indicated the property owned and the date of signing.

LEGAL DESCRIPTION	SIGNATURE	DATE
<u>GREENWICH OFFICE PARK SECOND ADDITION</u> Lots 1 & 2, Block 1; Greenwich Office Park Second Addition, an addition to Wichita, Sedgwick County, Kansas.	CORMACK, LLC  By: _____ Tim Buchanan, Member	

WITNESS our signatures attached with respect to each of which is indicated the property owned and the date of signing.

LEGAL DESCRIPTION	SIGNATURE	DATE
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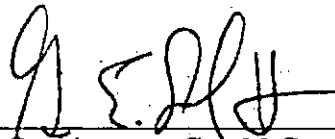
BERKELEY SQUARE FIRST ADDITION

Lots 1 through 4, Block I; Berkeley Square First Addition, an addition to Wichita, Sedgwick County, Kansas.

GREENWICH 13, LLC

A Kansas Limited Liability Company

By:



Laham Development Co., LLC

George E. Laham, II, Manager

WITNESS our signatures attached with respect to each of which is indicated the property owned and the date of signing.

LEGAL DESCRIPTION	SIGNATURE	DATE
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UNPLATTED TRACT

See legal description, page 1

GREENWICH 13, LLC

A Kansas Limited Liability Company

By: _____

Laham Development Co., LLC

George E. Laham, II, Manager

AFFIDAVIT

The undersigned, being first duly sworn on his oath, states: That he circulated the attached petition and that the signatures thereon are the genuine signatures of the persons they purport to be to the best of his knowledge and belief, being signed either in the presences of the undersigned or in the presence of one of the resident owners whose signature appears on the petition.

MKEC Engineering Consultants, Inc.
Company

Cynthia X. Wemack
Authorized Signature

411 N. Webb Road

Wichita, Kansas
Address

316-684-9600
Telephone

Sworn to and subscribed before me this 23rd day of June 20 11.

Deborah A. Adlort
Deputy City Clerk



City of Wichita
City Council Meeting
August 2, 2011

TO: Mayor and City Council
SUBJECT: Community Events – Delano Block Party (District IV)
INITIATED BY: Division of Arts & Cultural Services
AGENDA: Consent

Recommendation: Approve the request for temporary street closures.

Background: In accordance with the Community Events procedure, the event promoter Nancy Lawrence, Historic Delano, Inc. is coordinating with City of Wichita staff, subject to final approval by the City Council.

Analysis: The following street closure request has been submitted:

Delano Block Party August 11, 2011 6:30 pm – 8:00 pm

§ Douglas Avenue, Millwood Street to Glenn Street.

The promoter will arrange to remove the barricades as necessary to allow emergency vehicle access during the entire designated time period. The barricades will be removed immediately upon completion of the event.

Financial Consideration: The event promoter is responsible for all costs associated with the special event.

Goal Impact: Enhance the Quality of Life for citizens through special events and activities.

Legal Consideration: There are no legal considerations.

Recommendation/Actions: It is recommended that the City Council approve the request subject to; (1) Hiring off-duty certified law enforcement officers as required; (2) Obtaining barricades to close the streets in accordance with requirements of Police, Fire and Public Works Department.

City of Wichita
City Council Meeting
August 2, 2011

TO: Mayor and City Council

SUBJECT: Gas Pipe Line at Sewage Treatment Plant No. 2 (District III)

INITIATED BY: Department of Public Works & Utilities

AGENDA: Consent

Recommendation: Approve the gas pipeline easement.

Background: In 2010, Levee P improvements required a gas service line to be relocated. On February 2, 2010, the City Council approved the contract with Kansas Gas Service to relocate the private gas pipeline which serves Sewer Treatment Plant No. 2. This work has been completed.

Analysis: The previously recorded gas pipeline easement prepared by the design consultant conflicted with existing sewer digester structures requiring the gas pipeline to be relocated from the original easement. The revised gas pipeline easement is based on the as-built location of the gas pipeline and Kansas Gas Service has requested it to be recorded with the Sedgwick County Registrar of Deeds.

Financial Considerations: The recording costs will be paid from the Flood Control operation budget.

Goal Impact: This project addresses the Efficient Infrastructure goal by providing reliable gas service to Sewer Treatment Plant No. 2.

Legal Considerations: The gas pipeline easement has been reviewed by the Law Department and approved as to form.

Recommendations/Actions: It is recommended the City Council approve the easement agreement and authorize the necessary signatures.

Attachments: Easement agreement.

RELEASE OF UTILITY GAS LINE EASEMENT

KNOW ALL MEN BY THESE PRESENTS, that in consideration of the sum of one dollar (\$1.00) and other valuable consideration, receipt of which is hereby acknowledged, KANSAS GAS SERVICE, A DIVISION OF ONEOK, INC., being the owner of a certain Utility Gas Line Easement Grant, dated February 2, 2010, with the City of Wichita as Grantee, and recorded in the Office of the Register of Deeds of Sedgwick County, Kansas, on Doc. #/Flm.-Pg.: 29127331, does hereby release, relinquish and surrender all its rights, title and interest in and to said Utility Gas Line Easement Grant with respect to the following property:

A tract of land for Utility Easement lying in a portion of the Northwest Quarter of Section 27, Township 28 South, Range 1 East of the sixth Principal Meridian, Sedgwick County, Kansas, being more particularly described as follows:

BEGINNING 40 feet south and 50 feet east of the Northwest corner of the Southwest Quarter of said Northwest Quarter Section 27; thence parallel with the north line of said Southwest Quarter of said Northwest Quarter N88°59'03"E, 1583.79 feet; thence S00°41'17"E, 1021.93 feet; thence S21°16'51"E, 177.77 feet; thence N89°53'32"W, 21.48 feet; thence N21°16'51"W, 173.57 feet; thence N00°41'17"W, 1005.44 feet; thence parallel with the north line of said Southwest Quarter of said Northwest Quarter S88°59'03"W, 1563.72 feet; thence N00°52'50"W, 20.00 feet to the POINT OF BEGINNING.

IN WITNESS WHEREOF, KANSAS GAS SERVICE, A DIVISION OF ONEOK, INC. has caused this release to be executed by Teryl Rose, Vice President, KANSAS GAS SERVICE, A DIVISION OF ONEOK, INC., on this _____ day of _____, 2011.

Teryl Rose, Vice President

Personally appeared before me a notary public in and for the County and State aforesaid Rose, Vice President, KANSAS GAS SERVICE, A DIVISION OF ONEOK, INC., to me personally known to be the same person who executed the foregoing instrument of writing and said person duly acknowledged the execution thereof.

Date Wichita, Kansas this _____ day of _____, 2011.

Notary Public

APPROVAL AS TO FORM:

ATTEST:

My Commission Expires _____

Gary E. Rebenstorf
Director of Law

Karen Sublett
City Clerk

CITY OF WICHITA
City Council Meeting
August 2, 2011

TO: Mayor and City Council

SUBJECT: Acquisition of Land near 151st Street West and Kellogg for the West Kellogg Freeway Project (Districts IV and V)

INITIATED BY: Office of Property Management

AGENDA: Consent

Recommendation: Approve the acquisition.

Background: On January 6, 2009, the City Council approved the design concept for the Kellogg Freeway, between 111th Street West and 143rd Street West. The proposed improvements include widening the freeway from two lanes in each direction to three lanes in each direction, frontage roads, and grade separation at 119th Street West and 135th Street West. There are 43 tracts which will be impacted by the project. Included in this list is Lot 3, Block 3 Tapestry Meadows Addition. The parcel contains 42,253 square feet and is undeveloped.

Analysis: The project requires access control along the east and south sides of the property as well as utility easements across the tract. In addition, easements across the property will be required to facilitate the relocation of utilities associated with the project. The property was valued at \$84,506 (\$2.00 per square foot). This amount was offered to the owner and accepted.

Financial Considerations: A budget of \$85,506 is requested. This includes \$84,506 for the acquisition, and \$1,000 for the closing costs and other administrative costs. The funding source is Local Sales Tax (LST) and, State and Federal grant funds administered by the Kansas Department of Transportation.

Goal Impact: The acquisition of this property is necessary to ensure Efficient Infrastructure by improving an arterial street through a developed part of the City.

Legal Considerations: The Law Department has approved the real estate agreement as to form.

Recommendation/Action: It is recommended that the City Council; 1) Approve the Budget; 2) Approve the Real Estate Purchase Agreement; and 3) Authorize the necessary signatures.

Attachments: Aerial map, tract map, and real estate purchase agreement.

Tract #6 - D-53463
All Right of Access



(Not to Scale)

TAPESTRY MEADOWS SECOND

③

Woodbine Ln.

Exist. R/W

Freddie N. Booher
D-53463

3

295'

R/W (By Sep. Instrument)

P.O.B.

Exist. R/W

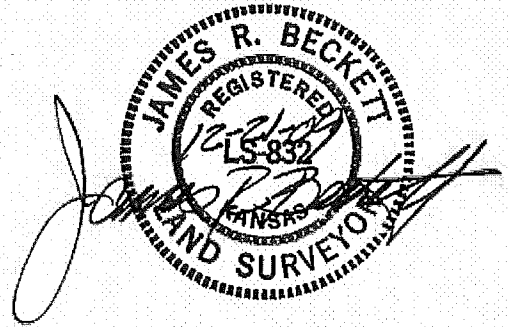
SE Cor., Sec. 27, T27S, R2W

Section Line

151st St. W. = Section Line

Tract #6 – D53463
Freddie N. Booher
All Right of Access

All right of access to and from the abutting public roadway over and across a line in Lot 3, Block 3, Tapestry Meadows Second Addition to Sedgwick County, Kansas, described as follows: Beginning at the Southeast Corner of said Lot 3; FIRST COURSE, thence North along the East line of said Lot 3 a distance of 295 feet.





Lot 3, Blk 3 Tapestry Meadows 2nd Add

D-53463

- Selected Features
- Property Parcels
- Roads
 - State Highway
 - US Federal Highway
 - Interstate
 - KTA
 - Arterial
 - Collector
 - Minor
 - Ramp
 - Railroads



Every reasonable effort has been made to assure the accuracy of the maps and associated data provided herein. This information is provided with the understanding that the data are susceptible to a degree of error, and conclusions drawn from such information are the responsibility of the reader. The City of Wichita makes no warranty, representation or guaranty as to the content, accuracy, timeliness or completeness of any of the data provided herein. Some data provided here and used for the preparation of these maps has been obtained from public records not created or maintained by the City of Wichita. The City of Wichita shall assume no liability for any decisions made or actions taken or not taken by the reader in reliance upon any information or data furnished hereunder. The user should consult with the appropriate departmental staff member, e.g. Planning, Parks & Recreation, etc. to confirm the accuracy of information appearing in the visual presentations accessible through these web pages.



REAL ESTATE PURCHASE CONTRACT

THIS AGREEMENT, Made and entered into this ____ day of July, 2011 by and between Freddie N. Booher, as Trustee of the Freddie N. Booher Revocable Trust, U.A. dated August 31, 2009, hereinafter referred to as "Seller," whether one or more, and the City of Wichita, Kansas, a municipal corporation, hereinafter referred to as "Buyer," whether one or more.

WHEREAS, the City desires to purchase the real property and improvements described herein below and will exercise its power of eminent domain if no agreement is reached between the parties; and

WHEREAS, the parties have reached agreement on the terms and conditions of the sale of the real property and improvements by the Seller to the Buyer and desire to reduce that agreement to writing; and

WITNESSETH: That for and in consideration of the mutual promises, covenants and payments hereinafter set out, the parties hereto do hereby contract to and with each other, as follows:

1. The Seller does hereby agree to sell and convey to the Buyer, by a good and sufficient warranty deed, the following described real property and improvements (the "Property"), situated in Sedgwick County, Kansas, to-wit:

Lot 3, Block 3, Tapestry Meadows Second Addition to Sedgwick County, Kansas (consisting of 41,382 sq. ft., more or less)

2. The Buyer hereby agrees to purchase, and pay to the Seller, as consideration for the conveyance to him of the above-described real property, the sum of Eighty-two Thousand Seven Hundred Sixty-Four Dollars (\$82,764.00) in cash at closing
3. A title insurance company's commitment to insure or a complete abstract of title certified to date, to the above described real property, showing a merchantable title vested in the seller, subject to easements and restrictions of record is required. The Title Evidence shall be sent to the Office of Property Management for the City of Wichita for examination by the Buyer as promptly and expeditiously as possible, and it is understood and agreed that the Seller shall have a reasonable time, but not to exceed thirty (30) days after said Title Evidence has been examined in which to correct any defects in title. If defects in title are not corrected to Buyer's satisfaction, Buyer, at Buyer's option, may cancel this contract. In the event an Owners title insurance policy is furnished, the total cost of the commitment to insure and the title insurance policy will be paid 0% by Seller and 100% by Buyer.
4. A duly executed copy of this Purchase Agreement shall be delivered to the parties hereto.
5. Taxes and specials shall be pro-rated for calendar year on the basis of 100% of taxes levied for the prior year. All prior years specials and taxes shall be current at time of closing.
6. The Seller further agrees to convey the above-described premises with all the improvements located thereon and deliver possession of the same in the same condition

as they now are, reasonable wear and tear accepted.

7. Seller shall place no encumbrances on the property during the period from execution of this contract to closing. In addition, Seller shall be responsible for carrying such insurance as is reasonable on the improvements up until the closing date.
8. It is understood and agreed between the parties hereto that time is of the essence of this contract, and that this transaction shall be consummated on or before August 15, 2011.
9. Possession to be given to Buyer at closing.
10. Closing costs shall be paid 100% by Buyer and 0% by Seller.
11. Site Assessment
 - A. At any time prior to the closing of this agreement, Buyer shall have the right to conduct or cause to be conducted an environmental site assessment and/or testing on the property. If an environmental audit or test reveals the presence of a hazardous substance or waste, as defined by federal or state law, or that there has been a spill or discharge of a hazardous substance or waste on the property, Buyer shall have the right to void this agreement upon notice to Seller, in which event neither party shall be under any further obligation to the other, with the exception that Seller shall return to Buyer any deposit made hereunder.
 - B. Provided, however, Buyer shall in no event be obligated to close before the completion of a site assessment made pursuant to Paragraph A above. If a site assessment is completed after the closing date set herein, then Buyer and Seller shall close or Buyer shall advise Seller that this agreement is being voided pursuant to said paragraph within ten (10) days of the completion of the site assessment. Buyer shall, if Buyer determines a site assessment is necessary, exercise good faith in commencing and diligently completing such site assessment after this agreement is executed by all parties.

WITNESS OUR HANDS AND SEALS the day and year first above written.

SELLER:

The Freddie N. Booher Revocable Trust
U.A. dated August 31, 2009


Freddie N. Booher, Trustee

BUYER:

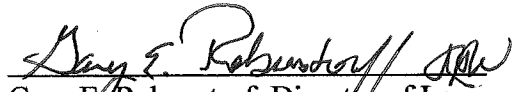
By Direction of the City Council

Carl Brewer, Mayor

ATTEST:

Karen Sublett, City Clerk

APPROVED AS TO FORM:



Gary E. Rebenstorf, Director of Law

CITY OF WICHITA
City Council Meeting
August 2, 2011

TO: Mayor and City Council

SUBJECT: Partial Acquisition of 2337 South Broadway for the Pawnee and Broadway Intersection Improvement Project (Districts III)

INITIATED BY: Office of Property Management

AGENDA: Consent

Recommendation: Approve the acquisition.

Background: On January 4, 2011, the City Council approved the design concept and proposed project to improve the intersection of Pawnee and Broadway. The project will require the acquisition of parts of five tracts. The intersection will be reconstructed to replace the pavement, construct left turn lanes in all directions and upgrade the traffic signals. The project requires a 450 square foot corner clip and temporary easements at the driveways from the property located at 2337 South Broadway. The property is improved as an automobile sales lot. The area within the proposed acquisition area consists of parking stalls and an onsite advertising sign.

Analysis: The acquisition and temporary easements were appraised at \$9,318. The owner felt that the estimated cost to replace the pipe fencing and asphalt paving was low and provided estimates to support a higher value. Based on this information, a purchase price of \$11,640 was agreed to. The cost of resetting the advertising sign will be paid as a moving expense and reimbursed to the seller upon completion of work. It is estimated that the cost of resetting the sign is \$4,000.

Financial Considerations: A budget of \$16,640 is requested. This amount is comprised of \$11,640 for the acquisition, \$4,000 for the sign and \$1,000 for the title work and other administrative fees.

Goal Impact: The acquisition of this parcel is necessary to ensure Efficient Infrastructure by improving the traffic flow through a major transportation corridor.

Legal Considerations: The Law Department has approved the real estate purchase agreement as to form.

Recommendation/Action: It is recommended that the City Council 1) Approve the budget and 2) Authorize the necessary signatures.

Attachments: Aerial map, tract map and real estate purchase agreement.

PROJECT: Broadway and Pawnee

DATE: July 12, 2011

COUNTY: Sedgwick

TRACT NO.: 2

CITY OF WICHITA, KANSAS

A MUNICIPAL CORPORATION

CONTRACT FOR CONVEYANCE OF REAL ESTATE BY WARRANTY DEED

THIS AGREEMENT made and entered into this 12th day of July, 2011 by and between:

Joe W. Self, Jr. Real Estate, LLC, and the City of Wichita, State of Kansas,

WITNESSETH, For consideration as hereinafter set forth, the landowner(s) hereby agree(s) to convey unto the City, their duly authorized agents, contractors and assigns the right to enter upon the following described land in Sedgwick County to wit:

RIGHT OF WAY

LEGAL DESCRIPTION:

That part of the Southeast Quarter of Section 32, Township 27 South, Range 1 East of the Sixth Principal Meridian, Sedgwick County, Kansas described as follows: Commencing at the southeast corner of said Southeast Quarter; thence northerly along the east line of said Southeast Quarter, 40.00 feet; thence westerly parallel with the south line of said Southeast Quarter, 50.00 feet to the intersection of the west right-of-way line of Broadway Ave. with the north right-of-way line of Pawnee Ave., as condemned in District Court Case No. A-7533, and for a point of beginning; thence westerly along the north right-of-way line of said Pawnee Ave., (as condemned in District Court Case No. A-7533), 30.00 feet; thence northeasterly, 42.70 feet to a point on the west right-of-way line of said Broadway Ave., (as condemned in District Court Case No. A-7533), said point also being 30.00 feet north of the point of beginning; thence southerly along the west right-of-way line of said Broadway Ave., (as condemned in District Court Case No. A-7533), 30.00 feet to the point of beginning.

Containing 449.96 Sq. Ft.

TEMPORARY CONSTRUCTION EASEMENTS

LEGAL DESCRIPTION: AREA 1:

That part of the Southeast Quarter of Section 32, Township 27 South, Range 1 East of the Sixth Principal Meridian, Sedgwick County, Kansas described as follows: Commencing at the southeast corner of said Southeast Quarter; thence westerly along the south line of said Southeast Quarter, 131.83 feet; thence northerly perpendicular to the south line of said Southeast Quarter, 40.00 feet to a point on the north right-of-way line of Pawnee Ave., and for a point of beginning; thence westerly along said north right-of-way line, 57.66 feet to the southeast corner of the alley as dedicated east of and abutting the east line of Block 3, Sunset Gardens Addition to Wichita, Kansas; thence northerly along the east line of said alley, 2.24 feet; thence northeasterly with a deflection angle to the right of 43°39'01", 17.84 feet to a point 15.00 feet normally distant north of said north right-of-way line; thence easterly parallel with said north right-of-way line, 30.09 feet; thence southeasterly with a deflection angle to the right of 44°44'55", 21.21 feet to the point of beginning.

Containing 670.47 Sq. Ft.

LEGAL DESCRIPTION: AREA 2

That part of the Southeast Quarter of Section 32, Township 27 South, Range 1 East of the Sixth Principal Meridian, Sedgwick County, Kansas described as follows: Commencing at the southeast corner of said Southeast Quarter; thence northerly along the east line of said Southeast Quarter, 141.02 feet; thence westerly perpendicular to the east line of said Southeast Quarter, 50.00 feet to a point on the west right-of-way line of Broadway Avenue, and for a point of beginning; thence northerly along said west right-of-way line, 41.00 feet; thence southwesterly with a deflection angle to the left of $135^{\circ}00'00''$, 7.07 feet to a point 5.00 feet normally distant west of said west right-of-way line; thence southerly parallel with said west right-of-way line 31.00 feet; thence southeasterly with a deflection angle to the left of $45^{\circ}00'00''$, 7.07 feet to the point of beginning.

Containing 180.00 Sq. Ft.

LEGAL DESCRIPTION: AREA 3

That part of the Southeast Quarter of Section 32, Township 27 South, Range 1 East of the Sixth Principal Meridian, Sedgwick County, Kansas described as follows: Commencing at the southeast corner of said Southeast Quarter, 269.93 feet; thence westerly perpendicular to the east line of said Southeast Quarter, 50.00 feet to a point on the west right-of-way line of Broadway Avenue, and for a point of beginning; thence northerly along said west right-of-way line, 51.00 feet; thence southwesterly with a deflection angle to the left of $135^{\circ}00'00''$, 14.14 feet to a point 10.00 feet normally distant west of said west right-of-way line; thence southerly parallel with said west right-of-way line, 31.00 feet; thence southeasterly with a deflection angle to the left of $45^{\circ}00'00''$, 14.14 feet to the point of beginning.

Containing 410.00 Sq. Ft.

LEGAL DESCRIPTION: AREA 4

That part of the Southeast Quarter of Section 32, Township 27 South, Range 1 East of the Sixth Principal Meridian, Sedgwick County, Kansas described as follows: Commencing at the southeast corner of said Southeast Quarter; thence northerly along the east line of said Southeast Quarter, 344.57 feet; thence westerly perpendicular to the east line of said Southeast Quarter, 50.00 feet to a point on the west right-of-way line of Broadway Avenue, and for a point of beginning; thence northerly along said west right-of-way line, 41.00 feet; thence southwesterly with a deflection angle to the left of $135^{\circ}00'00''$, 7.07 feet to a point 5.00 feet normally distant west of said west right-of-way line; thence southerly parallel with said west right-of-way line 31.00 feet; thence southeasterly with a deflection angle to the left of $45^{\circ}00'00''$, 7.07 feet to the point of beginning.

Containing 180.00 Sq. Ft.

It is understood and agreed that landowner(s) is/are responsible for all property taxes on the above described property accrued prior to the conveyance of title to the City. In the event of relocation, landowner(s) hereby expressly agrees and covenants that they will hold and save harmless and indemnify the City and its authorized representatives from any and all costs, liabilities, expenses, suits, judgements, damages to persons or property or claims of any nature whatsoever which may occur during the time the City becomes legally entitled to the property until the relocation is completed. In no event will the land owner(s) be required to move until the City becomes legally entitled to the property.

The City agrees to purchase the above described real estate, and to pay therefore, the following amount within 60 days after the warranty deed conveying said property free of encumbrance has been delivered.

Approximately 499.96 sq. ft. for right-of-way	\$ 5,000.00
1,440.47 sq. ft. for Temporary Easement	\$ 2,880.00
Cost to Cure: 42' of Pipe Fencing	\$ 1,260.00
Damages including but not limited to: _	\$ 2,500.00

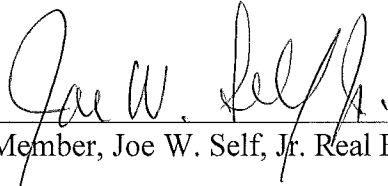
*** TOTAL \$ 11,640.00**

*** IN ADDITION TO THE AMOUNT ABOVE THE CITY WILL PAY THE AMOUNT IT COSTS TO RELOCATE THE SIGN LOCATED ON THE CORNER OF THE PROPERTY**

It is understood and agreed that the above stated consideration for said real estate is in full payment of said tract of land and all damages arising from the transfer of said property and its use for the purposes above set out.

IN WITNESS WHEREOF The parties have hereunto signed this agreement the day and year first above written.

LANDOWNERS:


 Joe W. Self, Jr., Member, Joe W. Self, Jr. Real Estate, LLC

City of Wichita
 County of Sedgwick
 State of Kansas

BUYER:

City of Wichita, KS, a municipal corporation

 Carl Brewer, Mayor

ATTEST:

 Karen Sublett, City Clerk

Approved as to form:

 Gary E. Rebenstorf, Director of Law

MEMORANDA

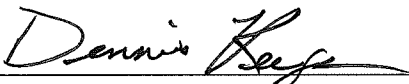
Exact and full name of owner, as it appears of record:

Joe W. Self, Jr. Real Estate, LLC

If mortgage or other liens, show names of holders:

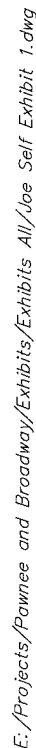
REMARKS:

RECOMMENDED BY:


Dennis Keegan, Acquisition Agent

LEGAL DESCRIPTION:

Containing 449.96 Sq. Ft.

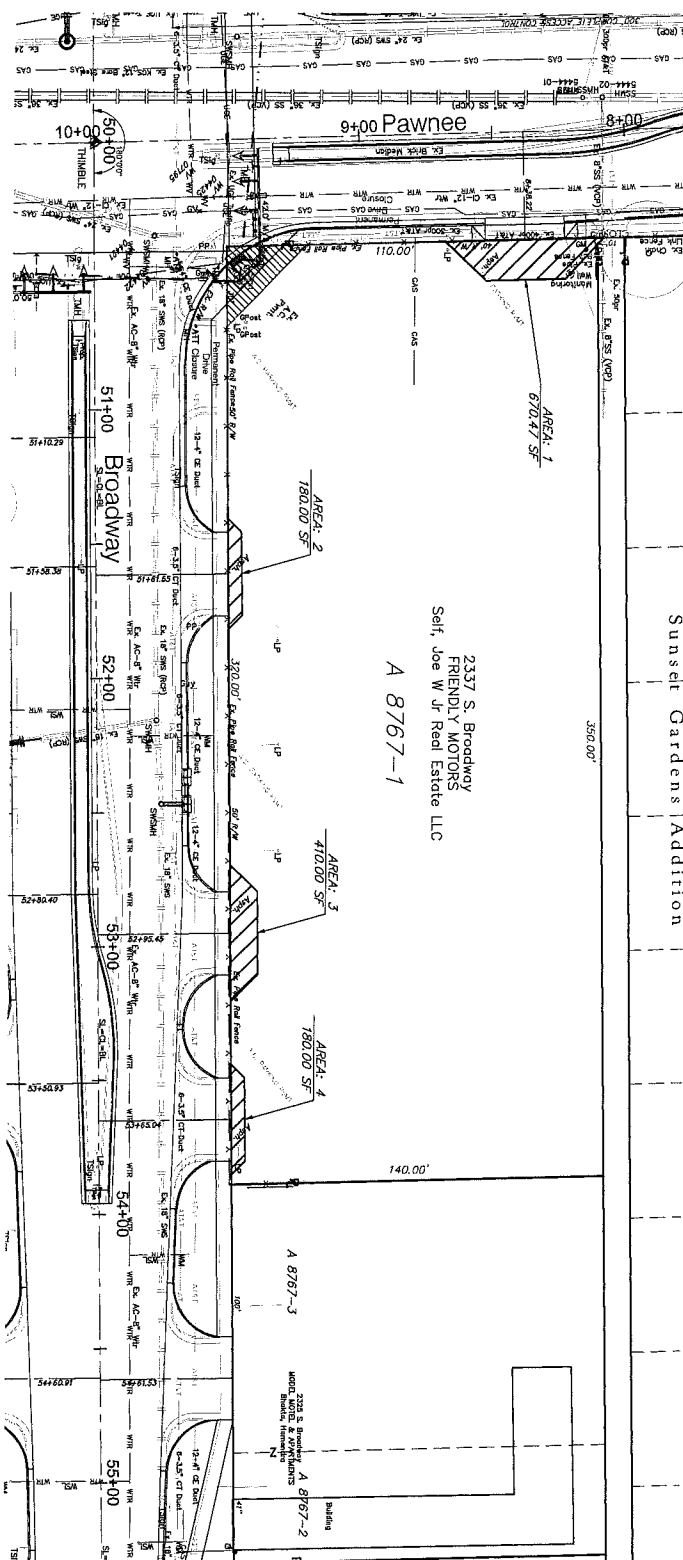


TEMPORARY CONSTRUCTION EASEMENTS

LEGAL DESCRIPTION: AREA 1:

That part of the Southeast Quarter of Section 32, Township 27 South, Range 1 East of the Sixth Principal Meridian, Sedgewick County, Kansas described as follows: Commencing at the southeast corner of said Southeast Quarter; thence westerly along the south line of said Southeast Quarter, 131.83 feet; thence northerly perpendicular to the south line of said Southeast Quarter, 40.00 feet to a point on the north right-of-way line of Pawnee Ave., and for a point of beginning; thence westerly along said north right-of-way line, 57.66 feet to the southeast corner of the alley as dedicated east of and abutting the east line of Block 3, Sunset Gardens Addition to Wichita, Kansas; thence northerly along the east line of said alley, 2.24 feet; thence northeasterly with a deflection angle to the right of $43^{\circ}39'01''$, 17.84 feet to a point 15.00 feet normally distant north of said north right-of-way line; thence easterly parallel with said north right-of-way line, 30.09 feet; thence southeasterly with a deflection angle to the right of $44^{\circ}44'55''$, 21.21 feet to the point of beginning.

Containing 670.47 Sq. Ft.



E:/Projects/Pawnee and Broadway/Exhibits/Exhibits All/Joe Self Exhibit 2.dwg

TEMPORARY CONSTRUCTION EASEMENTS

LEGAL DESCRIPTION: AREA 2

That part of the Southeast Quarter of Section 32, Township 27 South, Range 1 East of the Sixth Principal Meridian, Sedgewick County, Kansas described as follows: Commencing at the southeast corner of said Southeast Quarter; thence northerly along the east line of said Southeast Quarter, 141.02 feet; thence westerly perpendicular to the east line of said Southeast Quarter, 50.00 feet to a point on the west right-of-way line of Broadway Avenue, and for a point of beginning; thence northerly along said west right-of-way line, 41.00 feet; thence southwesterly with a deflection angle to the left of $135^{\circ}00'00''$, 7.07 feet to a point 5.00 feet normally distant west of said west right-of-way line; thence southerly parallel with said west right-of-way line 31.00 feet; thence southeasterly with a deflection angle to the left of $45^{\circ}00'00''$, 7.07 feet to the point of beginning.

Containing 180.00 Sq. Ft.

LEGAL DESCRIPTION: AREA 3

That part of the Southeast Quarter of Section 32, Township 27 South, Range 1 East of the Sixth Principal Meridian, Sedgewick County, Kansas described as follows: Commencing at the southeast corner of said Southeast Quarter, 269.93 feet; thence westerly perpendicular to the east line of said Southeast Quarter, 50.00 feet to a point on the west right-of-way line of Broadway Avenue, and for a point of beginning; thence northerly along said west right-of-way line, 51.00 feet; thence southwesterly with a deflection angle to the left of $135^{\circ}00'00''$, 14.14 feet to a point 10.00 feet normally distant west of said west right-of-way line; thence southerly parallel with said west right-of-way line, 31.00 feet; thence southeasterly with a deflection angle to the left of $45^{\circ}00'00''$, 14.14 feet to the point of beginning.

Containing 410.00 Sq. Ft.

LEGAL DESCRIPTION: AREA 4

That part of the Southeast Quarter of Section 32, Township 27 South, Range 1 East of the Sixth Principal Meridian, Sedgewick County, Kansas described as follows: Commencing at the southeast corner of said Southeast Quarter; thence northerly along the east line of said Southeast Quarter, 344.57 feet; thence westerly perpendicular to the east line of said Southeast Quarter, 50.00 feet to a point on the west right-of-way line of Broadway Avenue, and for a point of beginning; thence northerly along said west right-of-way line, 41.00 feet; thence southwesterly with a deflection angle to the left of $135^{\circ}00'00''$, 7.07 feet to a point 5.00 feet normally distant west of said west right-of-way line; thence southerly parallel with said west right-of-way line 31.00 feet; thence southeasterly with a deflection angle to the left of $45^{\circ}00'00''$, 7.07 feet to the point of beginning.

Containing 180.00 Sq. Ft.



CITY OF WICHITA



2337 S. Broadway - Self Detail



☐ Identified Features

☐ Delano Overlay District

☐ NO

☒ YES

☐ Property

☐ Parcels

Roads

☒ State Highway

☒ US Federal Highway

☒ Interstate

☒ KTA

☒ Arterial

☒ Collector

☒ Minor

☒ Ramp

☒ Railroads

☒ Quarter Section

☒ Waterways

☒ Streams

☒ Parks

☒ Airports

☒ SDEMASTER-S-DEDATA.ORTH-01T

☒ SDEMASTER-S-DEDATA.ORTH-0

City Limits

☒ Andale

☒ Bel Aire

☒ Bentley

☒ Cheney

☒ Clearwater

☒ Colwich

☒ Derby

☒ Eastborough

☒ Garden Plain

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Every reasonable effort has been made to assure the accuracy of the maps and associated data provided herein. This information is provided with the understanding that the data are susceptible to a degree of error, and no warranties are made by the City of Wichita. The City of Wichita makes no warranty, representation or guarantee as to the content, accuracy, timeliness or completeness of any of the data provided herein. Some data provided here and used for the preparation of these maps has been obtained from public records not created or maintained by the City of Wichita. The City of Wichita shall assume no liability for any decisions made or actions taken or not taken by the reader in reliance upon any information or data furnished hereunder. The user should consult with the appropriate departmental staff member, e.g. Planning, Parks & Recreation, etc. to confirm the accuracy of information appearing in the visual presentations accessible through these web pages.



CITY OF WICHITA
City Council Meeting
August 2, 2011

TO: Mayor and City Council

SUBJECT: Partial Acquisition of Vacant Land at the Northeast Corner of 135th Street West and Kellogg for the West Kellogg Freeway Project (Districts IV and V)

INITIATED BY: Office of Property Management

AGENDA: Consent

Recommendation: Approve the acquisition.

Background: On January 6, 2009, the City Council approved the design concept for the Kellogg Freeway, between 111th Street West and 143rd Street West. The proposed improvements include widening the freeway from two lanes in each direction to three lanes in each direction, frontage roads, and grade separation at 119th Street West and 135th Street West. There are 43 tracts which will be impacted by the project. The properties consist of single-family residences, commercial properties, vacant land, and billboards. The property at the northeast corner of 135th Street West and Kellogg consists of 12.82 acres and is zoned General Commercial. The proposed project requires a strip of land along the west edge of the property with access control. The acquisition area varies in width from 50 feet at the south to ten feet on the north. The size of the proposed acquisition is 8,653 square feet. A 4,933 square foot temporary easement is also required during construction.

Analysis: The owner rejected the appraised value of \$34,800; \$30,289 for the land at \$3.50 per square foot and \$4,460 for the temporary easement, or \$0.90 per square foot. The owner's counter offers at \$110,945 (\$12.00 per square foot) and later \$60,710 (\$6.50 per square foot) was rejected by the City. Through negotiation, the owner agreed to accept \$47,730, or \$43,270 for the land at \$5 per square foot together with the temporary easement at \$4,460. The proposed settlement is reasonable and prudent and avoids the risk associated with eminent domain.

Financial Considerations: A budget of \$49,730 is requested. This includes \$47,730 for the acquisition and \$2,000 for the closing costs and other administrative costs. The funding source is Local Sales Tax (LST) and, State and Federal grant funds administered by the Kansas Department of Transportation.

Goal Impact: The acquisition of this easement is necessary to ensure Efficient Infrastructure by improving an arterial street through a developed part of the City.

Legal Considerations: The Law Department has approved the real estate agreement as to form.

Recommendation/Action: It is recommended that the City Council; 1) Approve the Budget; 2) Approve the Real Estate Purchase Agreement; and 3) Authorize the necessary signatures.

Attachments: Aerial map, tract map, and real estate purchase agreement.

PROJECT: West Kellogg DATE: January 20, 2011
COUNTY: Sedgwick TRACT NO.: 0027

THE CITY OF WICHITA, KANSAS

CONTRACT FOR CONVEYANCE
OF REAL ESTATE BY WARRANTY DEED WITH ACCESS
CONTROL AND TEMPORARY EASEMENT

THIS AGREEMENT Made and entered into this _____ day of _____, **2011**, by and between:

Dali Investment, L.L.C.

1608 E Lewis Street, Wichita, KS 67211

(Name and Address)

landowner(s), and

The City of Wichita, KS, a municipal corporation.
455 N Main
Wichita, KS 67202

WITNESSETH, For consideration as hereinafter set forth, the landowner(s) hereby agree(s) to convey fee title to the City of Wichita by Warranty Deed with Access Control and Temporary Easement to the following described real estate in the County of Sedgwick, State of Kansas, to wit:

SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF

It is understood and agreed that landowner(s) is/are responsible for all property taxes on the above described property accrued prior to the conveyance of title to the City of Wichita. In the event of relocation, landowner(s) hereby expressly agrees and covenants that they will hold and save harmless and indemnify the City of Wichita and his or her authorized representatives from any and all costs, liabilities, expenses, suits, judgments, damages to persons or property or claims of any nature whatsoever which may occur during the time the City becomes legally entitled to the property and the date of relocation. In no event will the landowner(s) be required to move until the City becomes legally entitled to the property.

The City of Wichita agrees to purchase the above described real estate, and to pay therefore, the following amount within sixty days after the warranty deed conveying said property free of encumbrance has been delivered.

Real property to be acquired as right of way:
8,654 with access control (Sq. Ft.) \$ 43,270.00
Temporary Easement for construction:
4,934 (Sq. Ft.) \$ 4,460.00

Improvement & Buildings acquired with right of way
\$ N/A

TOTAL: \$ 47,730.00

It is understood and agreed that the above stated consideration for said real estate is in full payment of said tract of land and all damages arising from the transfer of said property and its use for the purposes above set out.

IN WITNESS WHEREOF The parties have hereunto signed this agreement the day and year first above written.

LANDOWNERS: **Dali Investment, L.L.C.**

W.E. Lusk, Jr., Managing Member

By: 

By: _____

THE CITY OF WICHITA

ATTEST:

By: _____
Carl Brewer, Mayor

By: _____
Karen Sublett, City Clerk

MEMORANDA

Exact and full name of owner, as name appears of record:

Dali Investment, L.L.C.

If mortgage or other liens, show names of holders:

REMARKS:

PIN/APN
Security Title File Number

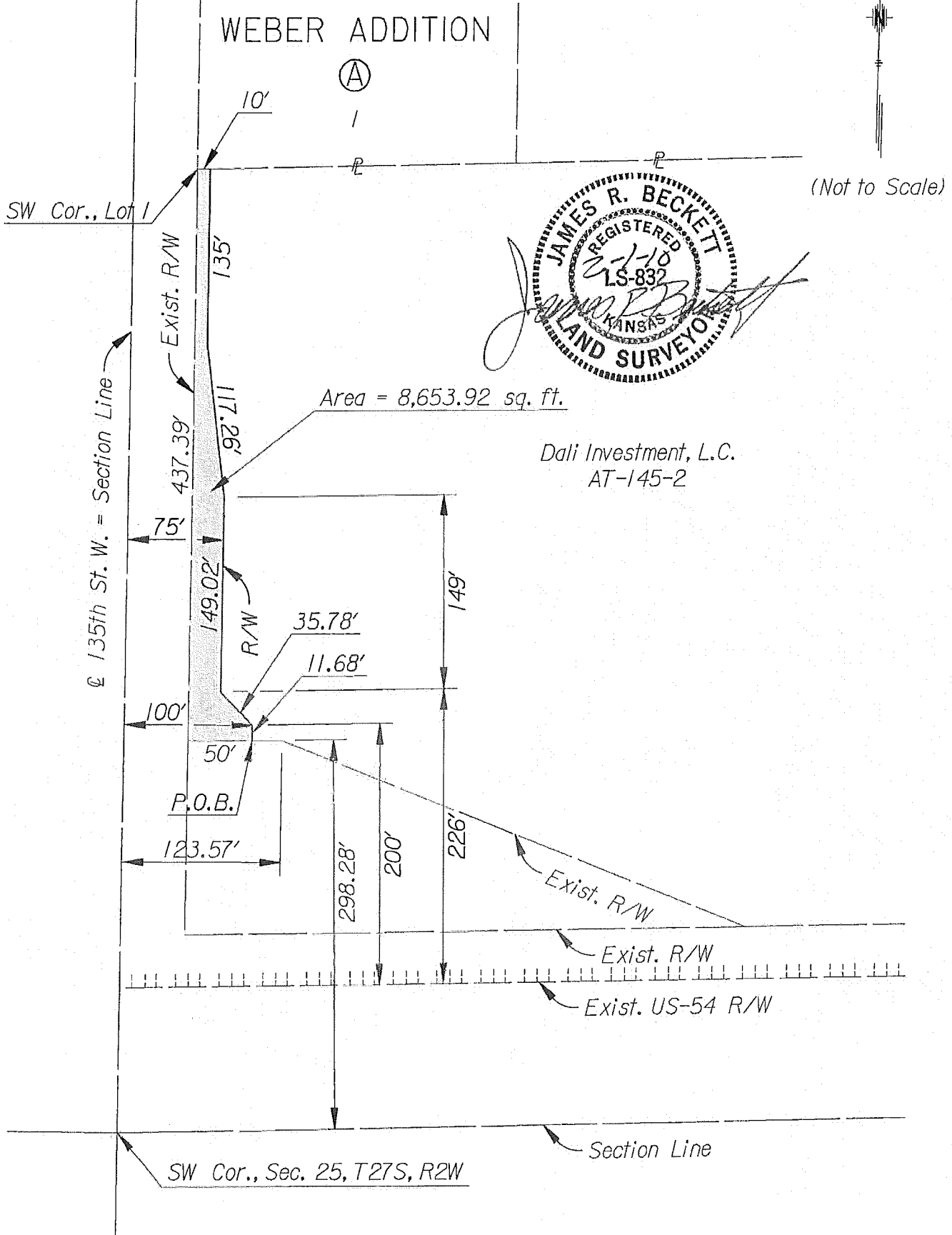
APPROVED TO FORM:

Gary E. Rebenstorf, Director of Law

RECOMMENDED BY:

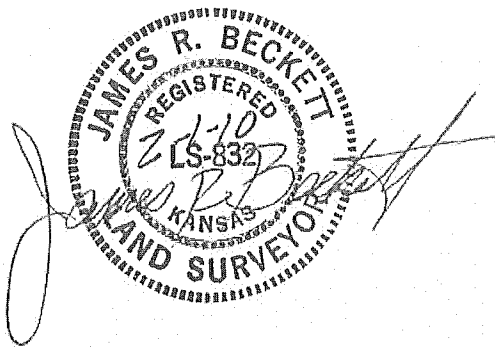
John Philbrick, Property Manager

Tract #27A - AT-145-2
Easement for Right of Way

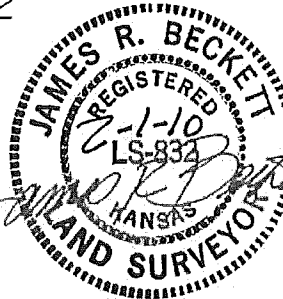


Tract #27A – AT-145-2
Dali Investment, L.C.
Easement for Right-of-Way

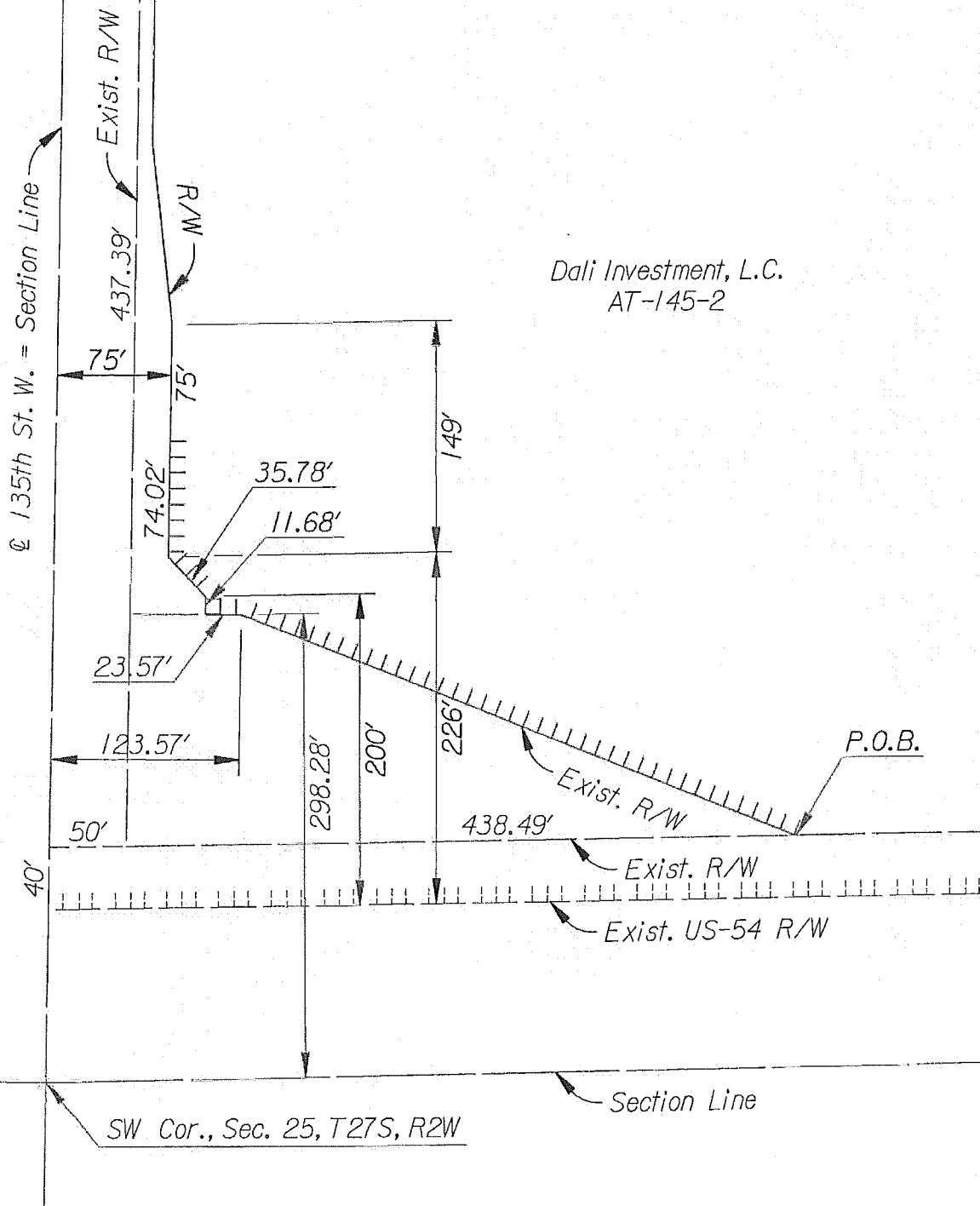
Commencing from a point 298.28 feet North and 123.57 feet East of the Southwest Corner of the Southwest Quarter of Section 25, Township 27 South, Range 2 West of the 6th P.M., Sedgwick County, Kansas; thence West, perpendicular to the West line of said Southwest Quarter, a distance of 23.57 feet to the point of beginning; thence continuing West, perpendicular to said West line, a distance of 50 feet; thence North, parallel with said West line, a distance of 437.39 feet to the Southwest Corner of Lot 1, Block A, Weber Addition to Sedgwick County, Kansas; thence East, parallel with the South line of said Southwest Quarter, a distance of 10 feet; thence South, parallel with said West line, a distance of 135 feet; thence Southerly for a distance of 117.26 feet to a point 75 feet East of said West line and 375 feet North of the North right-of-way line of U.S. Highway 54 per Condemnation Case A-38302; thence South, parallel with said West line, a distance of 149.02 feet to a point 226 feet North of said North highway right-of-way line; thence Southeasterly for a distance of 35.78 feet to a point 100 feet East of said West line and 200 feet North of said North highway right-of-way line; thence South, parallel with said West line, a distance of 11.68 feet to the point of beginning, containing 8,653.92 square feet more or less.



Tract #27B - AT-145-2
All Right of Access
(Exhibit 1 of 2)



(Not to Scale)



Tract #27B – AT-145-2
Dali Investment, L.C.
All Right of Access

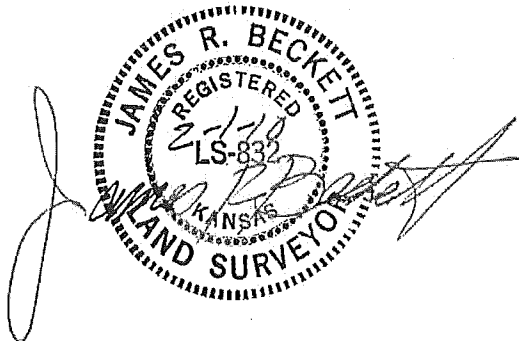
(Exhibit 1 of 2)

All right of access to and from the abutting public roadway over and across a line in the Southwest Quarter of Section 25, Township 27 South, Range 2 West of the 6th P.M., Sedgwick County, Kansas, described as follows: Commencing from the intersection of the North right-of-way line of U.S. Highway 54 per Condemnation Case A-38302 and the West line of said Southwest Quarter; thence North along said West line a distance of 40 feet; thence East, parallel with said North highway right-of-way line, a distance of 488.49 feet to the point of beginning; FIRST COURSE, thence Northwesterly to a point 298.28 feet North and 123.57 feet East of the Southwest Corner of said Southwest Quarter; SECOND COURSE, thence West, perpendicular to the West line of said Southwest Quarter, a distance of 23.57 feet; THIRD COURSE, thence North, parallel with said West line, a distance of 11.68 feet to a point 200 feet North of said North highway right-of-way line; FOURTH COURSE, thence Northwesterly for a distance of 35.78 feet to a point 226 feet North of said North highway right-of-way line and 75 feet East of said West line; FIFTH COURSE, thence North, parallel with said West line, a distance of 149.02 feet to a point 375 feet North of said North highway right-of-way line. Except and reserving, however, unto owners of abutting land, their heirs or assigns, the right of access to said public roadway for the purpose of an entrance over and across the following described course: Beginning at the end of said "FIFTH" course and extending South, 75 feet.

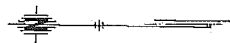
TOGETHER WITH,

(Exhibit 2 of 2)

All right of access to and from the abutting public roadway over and across a line in the Southwest Quarter of Section 25, Township 27 South, Range 2 West of the 6th P.M., Sedgwick County, Kansas, described as follows: Commencing from the intersection of the North right-of-way line of U.S. Highway 54 per Condemnation Case A-38302 and the East line of said Southwest Quarter; thence West along said North highway right-of-way line a distance of 1468.75 feet; thence North with a deflection angle to the right of 89° 48' a distance of 40 feet; thence West, parallel with said North highway right-of-way line a distance of 80 feet to the point of beginning; FIRST COURSE, thence continuing West, parallel with said North highway right-of-way line, a distance of 425 feet.

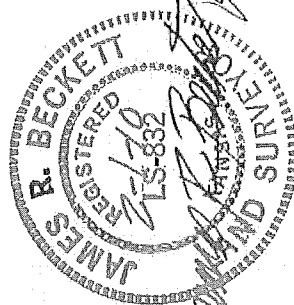
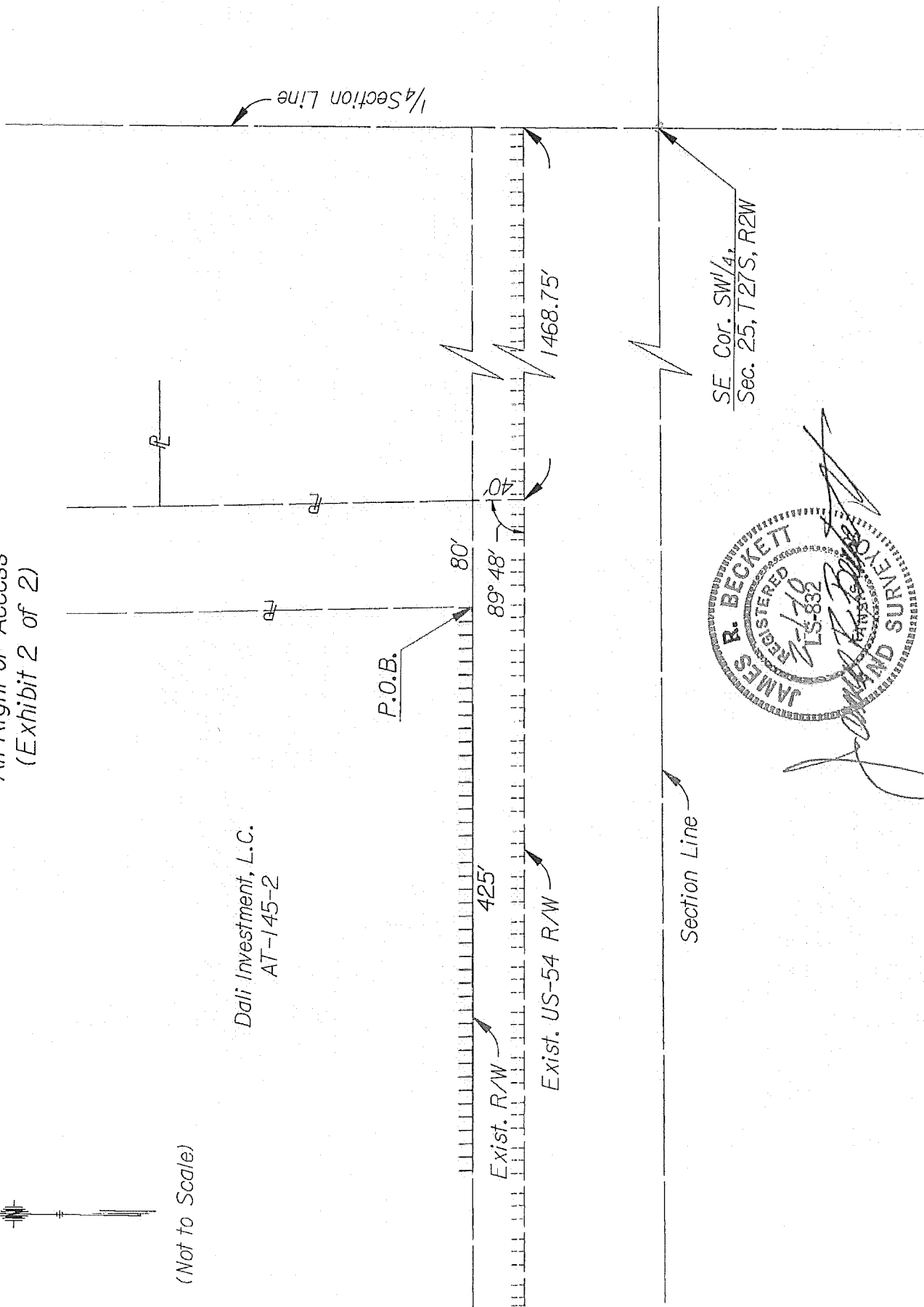


Tract #27B - AT-145-2
 All Right of Access
 (Exhibit 2 of 2)



(Not to Scale)

Dali Investment, L.C.
 AT-145-2



SE Cor. SW 1/4,
 Sec. 25, T27S, R2W

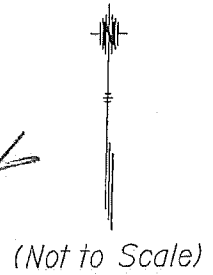
Section Line

Tract #27C – AT-145-2
Dali Investment, L.C.
Temporary Construction Easement

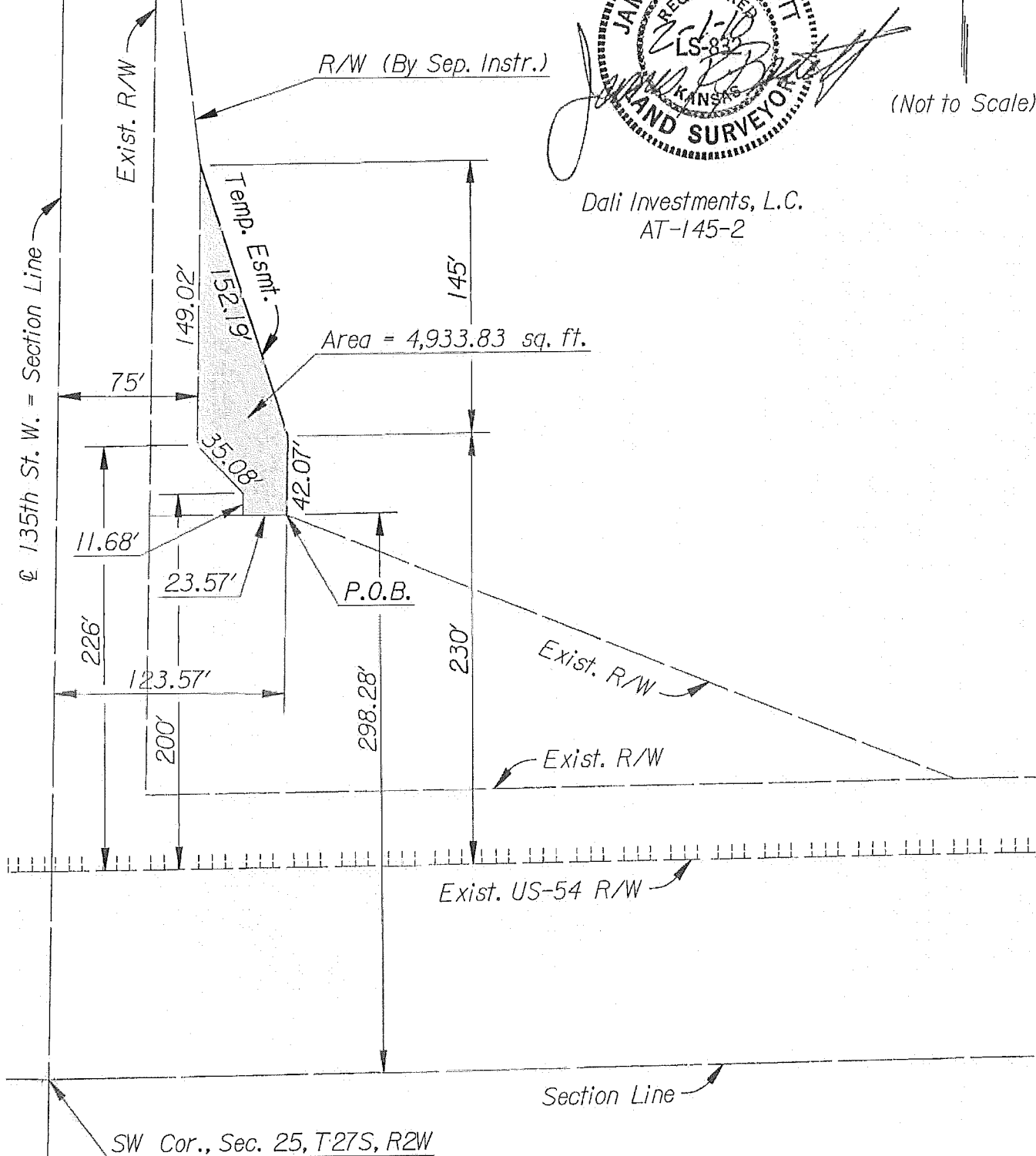
Beginning at a point 298.28 feet North and 123.57 feet East of the Southwest Corner of the Southwest Quarter of Section 25, Township 27 South, Range 2 West of the 6th P.M., Sedgwick County, Kansas; thence West, perpendicular to the West line of said Southwest Quarter, a distance of 23.57 feet; thence North, parallel with said West line, a distance of 11.68 feet to a point 200 feet North of the North right-of-way line of U.S. Highway 54 per Condemnation Case A-38302; thence Northwesterly for a distance of 35.78 feet to a point 226 feet North of said North highway right-of-way line and 75 feet East of said West line; thence North, parallel with said West line, a distance of 149.02 feet to a point 375 feet North of said North highway right-of-way line; thence Southeasterly for a distance of 152.19 feet to a point 230 feet North of said North highway right-of-way line and 123.57 feet East of said West line; thence South, parallel with said West line, a distance of 42.07 feet to the point of beginning, containing 4,933.83 square feet more or less.



Tract #27C - AT-145-2
Temporary Construction Easement

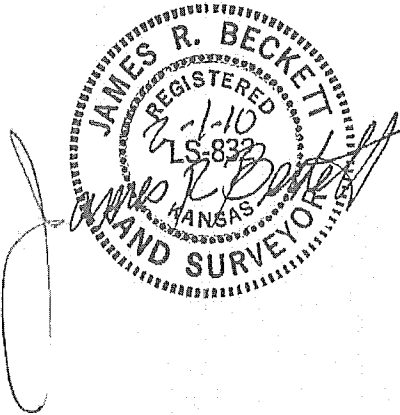


Dali Investments, L.C.
AT-145-2



Tract #27D – AT-145-2
Dali Investment, L.C.
Right-of-way Vacation

Commencing from the intersection of the North right-of-way line of U.S. Highway 54 per Condemnation Case A-38302 and the West line of the Southwest Quarter of Section 25, Township 27 South, Range 2 West of the 6th P.M., Sedgwick County, Kansas; thence North along said West line a distance of 40 feet; thence East, parallel with said North highway right-of-way line, a distance of 125 feet to the point of beginning; thence continuing East, parallel with said North highway right-of-way line, a distance of 363.49 feet; thence Northwesterly to a point 298.28 feet North and 123.57 feet East of the Southwest Corner of said Southwest Quarter; thence West, perpendicular to said West line, a distance of 23.57 feet; thence South, parallel with said West line, a distance of 19 feet; thence Southwesterly for a distance of 28.39 feet to a point 149.50 feet North of said North highway right-of-way line and 80 feet East of said West line; thence South, parallel with said West line, a distance of 60 feet; thence Southeasterly for a distance of 66.36 feet to the point of beginning, containing 0.73 acres more or less.



Northeast Corner 135th St and Kellogg



Every reasonable effort has been made to assure the accuracy of the maps and associated data provided herein. This information is provided with the understanding that the data are susceptible to a degree of error, and conclusions drawn from such information are the responsibility of the reader. The City of Wichita makes no warranty, representation or guaranty as to the content, accuracy, timeliness or completeness of any of the data provided herein. Some data provided here and used for the preparation of these maps has been obtained from public records not created or maintained by the City of Wichita. The City of Wichita shall assume no liability for any decisions made or actions taken or not taken by the reader in reliance upon any information or data furnished hereunder. The user should consult with the appropriate departmental staff member, e.g. Planning, Parks & Recreation, etc. to confirm the accuracy of information appearing in the visual presentations accessible through these web pages.

CITY OF WICHITA
City Council Meeting
August 2, 2011

TO: Mayor and City Council

SUBJECT: Acquisition of 1541-1551 South 151st for the West Kellogg Freeway Project (Districts IV and V)

INITIATED BY: Office of Property Management

AGENDA: Consent

Recommendation: Approve the acquisition.

Background: On January 6, 2009, the City Council approved the design concept for the Kellogg Freeway, between 111th Street West and 143rd Street West. The proposed improvements include widening the freeway from two lanes in each direction to three lanes in each direction, frontage roads, and grade separation at 119th Street West and 135th Street West. There are 43 tracts which will be impacted by the project. Included in this list is 1541-1551 South 151st Street. The site contains 66,211 square feet and is developed with 6,500 square foot multi-tenant retail building, a 960 square foot restaurant and a 705 square foot veterinary clinic. The owner operates the 960 foot restaurant. The improvements are impacted by the project requiring the acquisition of the entire site and relocation of the occupants.

Analysis: The property was appraised at \$400,000. The owner rejected the appraised offer and countered at \$1,100,000. The owner later got an appraisal that valued the site at \$920,000. Through negotiations, the owner has agreed to \$875,000. This amount includes all reestablishment and relocation benefits to which the owner is entitled in association with his rental activities as well as the restaurant operation.

Financial Considerations: A budget of \$942,000 is requested. This includes \$725,000 for the acquisition, \$200,000 for relocation of the owner and tenants, \$15,000 for demolition and \$2,000 for the closing costs and other administrative costs. The funding source is Local Sales Tax (LST) and, State and Federal grant funds administered by the Kansas Department of Transportation.

Goal Impact: The acquisition of this easement is necessary to ensure Efficient Infrastructure by improving an arterial street through a developed part of the City.

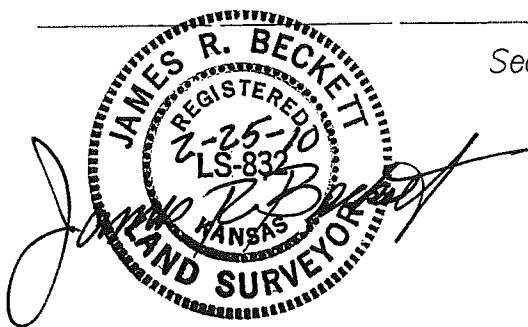
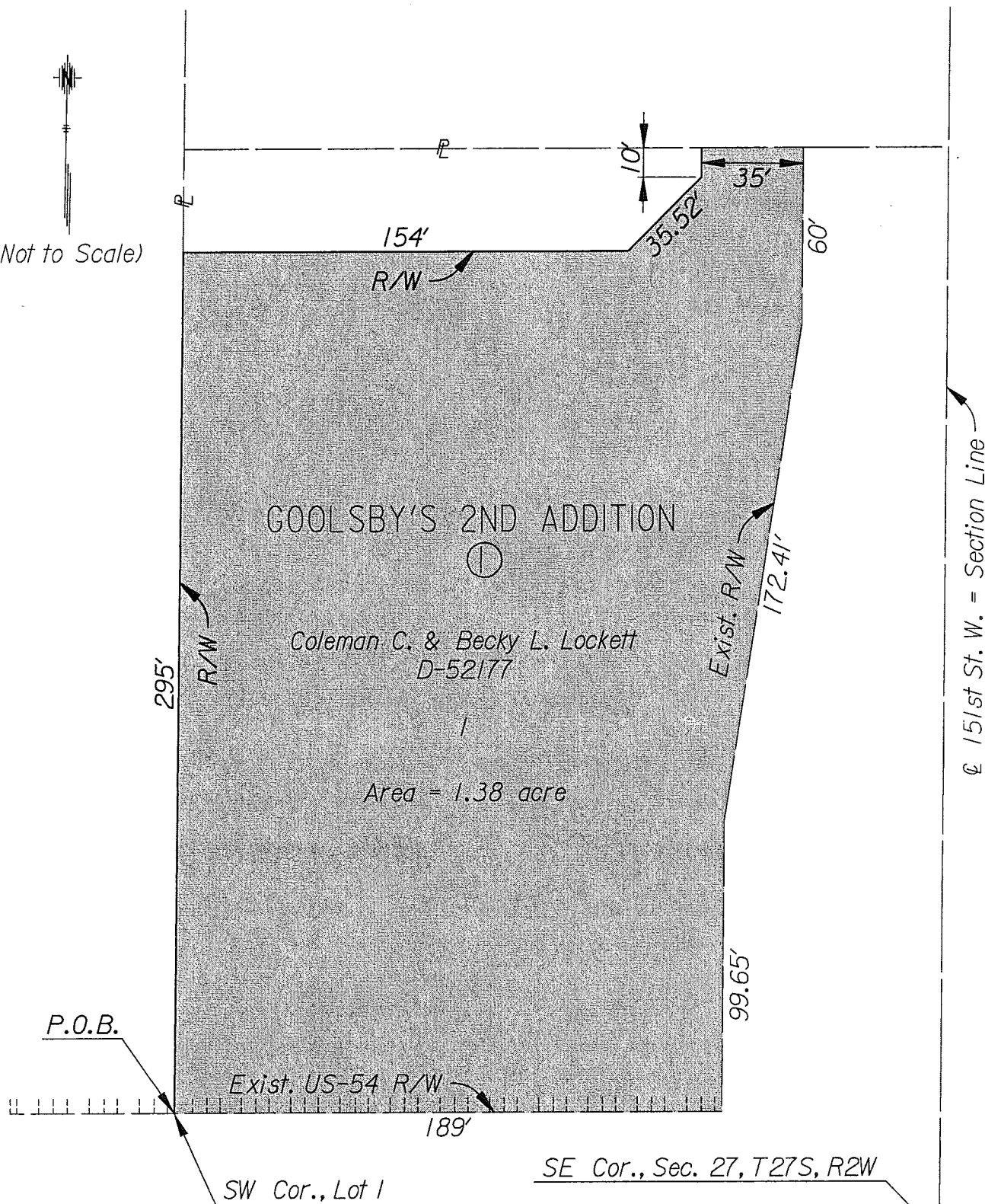
Legal Considerations: The Law Department has approved the real estate agreement as to form.

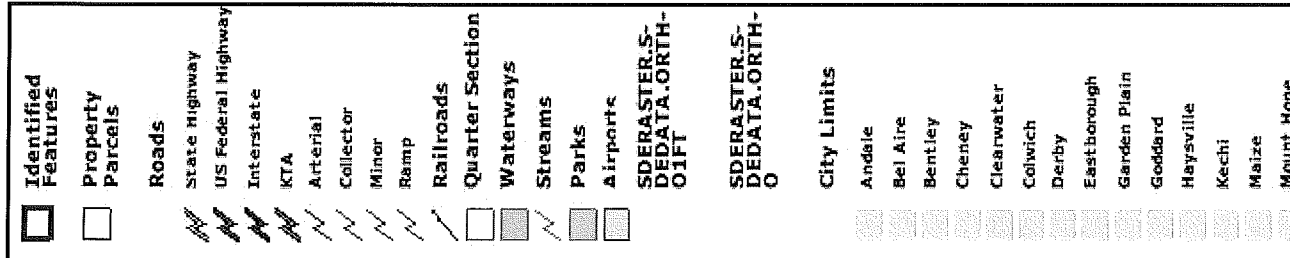
Recommendation/Action: It is recommended that the City Council; 1) Approve the Budget; 2) Approve the Real Estate Purchase Agreement; and 3) Authorize the necessary signatures.

Attachments: Aerial map, tract map, and real estate purchase agreement.

Tract #5A - D-52177

(Not to Scale)





Every reasonable effort has been made to assure the accuracy of the maps and associated data provided herein. This information is provided with the understanding that the data are susceptible to a degree of error, and conclusions drawn from such information are the responsibility of the reader. The City of Wichita makes no warranty, representation or guaranty as to the content, accuracy, timeliness or completeness of any of the data provided herein. Some data provided here and used for the preparation of these maps has been obtained from public records not created or maintained by the City of Wichita. The City of Wichita shall assume no liability for any decisions made or actions taken or not taken by the reader in reliance upon any information or data furnished hereunder. The user should consult with the appropriate departmental staff member, e.g. Planning, Parks & Recreation, etc. to confirm the accuracy of information appearing in the visual presentations accessible through these web pages.

REAL ESTATE PURCHASE CONTRACT

THIS AGREEMENT, Made and entered into this ____ day of August, 2011 by and between Coleman Lockett and Becky Lockett, husband and wife, hereinafter referred to as "Seller," whether one or more, and the City of Wichita, Kansas, a municipal corporation, hereinafter referred to as "Buyer," whether one or more.

WHEREAS, the City desires to purchase the real property and improvements described herein below and will exercise its power of eminent domain if no agreement is reached between the parties; and

WHEREAS, the parties have reached agreement on the terms and conditions of the sale of the real property and improvements by the Seller to the Buyer and desire to reduce that agreement to writing; and

WITNESSETH: That for and in consideration of the mutual promises, covenants and payments hereinafter set out, the parties hereto do hereby contract to and with each other, as follows:

1. The Seller does hereby agree to sell and convey to the Buyer, by a good and sufficient warranty deed, the following described real property, situated in Sedgwick County, Kansas, to-wit:
Lot 1, Block 1, Goolsby's Second Addition to Sedgwick County, Kansas
2. The Buyer hereby agrees to purchase, and pay to the Seller, as consideration for the conveyance to him of the above-described real property, the sum of Seven Hundred and Twenty-five Thousand Dollars (\$725,000.00) in cash at closing
3. A title insurance company's commitment to insure or a complete abstract of title certified to date, to the above described real property, showing a merchantable title vested in the seller, subject to easements and restrictions of record is required. The Title Evidence shall be sent to the Office of Property Management for the City of Wichita for examination by the Buyer as promptly and expeditiously as possible, and it is understood and agreed that the Seller shall have a reasonable time, but not to exceed thirty (30) days after said Title Evidence has been examined in which to correct any defects in title. If defects in title are not corrected to Buyer's satisfaction, Buyer, at Buyer's option, may cancel this contract. In the event an Owners title insurance policy is furnished, the total cost of the commitment to insure and the title insurance policy will be paid 0% by Seller and 100% by Buyer.
4. A duly executed copy of this Purchase Agreement shall be delivered to the parties hereto.
5. Taxes and specials shall be pro-rated for calendar year on the basis of 100% of taxes levied for the prior year. All prior years specials and taxes shall be current at time of closing.
6. The Seller further agrees to convey the above-described premises with all the improvements located thereon and deliver possession of the same in the same condition as they now are, reasonable wear and tear accepted.

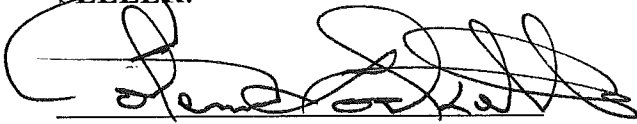
7. Seller shall place no encumbrances on the property during the period from execution of this contract to closing. In addition, Seller shall be responsible for carrying such insurance as is reasonable on the improvements up until the closing date.
8. It is understood and agreed between the parties hereto that time is of the essence of this contract, and that this transaction shall be consummated on or before August 15, 2011.
9. Possession to be given to Buyer upon 30 days written notice from Buyer, said transfer of possession to occur no sooner than December 31, 2011 unless Seller chooses to vacate sooner. Seller shall be entitled to all rents due and payable pursuant to the terms of the leases identified Attachment A until such time as possession is given to Buyer. Seller shall be responsible for all taxes and liability insurance on the property until the transfer of possession.
10. Closing costs shall be paid 100% by Buyer and 0% by Seller.
11. In addition to the purchase price to be paid for the Property as set out above, Buyer shall pay Seller, at closing, the amount of One Hundred Fifty Thousand Dollars (\$150,000.00) in full satisfaction of all claims that Seller may assert pursuant to the Uniform Relocation Assistance and Real Property Acquisition Policies for Federal and Federally Assisted Programs, 42 U.S.C.A. 4601, et. Seq.
12. At closing, Seller shall provide lease releases for all leases identified in Attachment A allowing said leases to be terminated upon thirty (30) days notice by Buyer. Buyer shall not be liable to Seller for any rents pursuant to said leases.
13. Site Assessment
 - A. At any time prior to the closing of this agreement, Buyer shall have the right to conduct or cause to be conducted an environmental site assessment and/or testing on the property. If an environmental audit or test reveals the presence of a hazardous substance or waste, as defined by federal or state law, or that there has been a spill or discharge of a hazardous substance or waste on the property, Buyer shall have the right to void this agreement upon notice to Seller, in which event neither party shall be under any further obligation to the other, with the exception that Seller shall return to Buyer any deposit made hereunder.
 - B. Provided, however, Buyer shall in no event be obligated to close before the completion of a site assessment made pursuant to Paragraph A above. If a site assessment is completed after the closing date set herein, then Buyer and Seller shall close or Buyer shall advise Seller that this agreement is being voided pursuant to said paragraph within ten (10) days of the completion of the site assessment. Buyer shall, if Buyer determines a site assessment is necessary, exercise good faith in commencing and diligently completing such site assessment after this agreement is executed by all parties.

14. Survive Closing

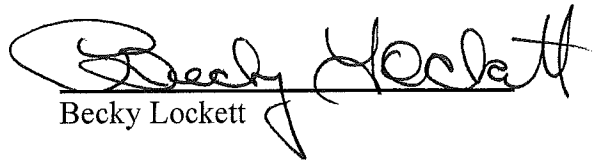
The terms, conditions, representations and warranties set forth in this Agreement, including but not limited to those terms and conditions set forth in paragraph 9 and paragraph 11, shall survive the closing of the transaction contemplated by this agreement.

WITNESS OUR HANDS AND SEALS the day and year first above written.

SELLER:



Coleman Lockett



Becky Lockett

BUYER:

By Direction of the City Council

Carl Brewer, Mayor

ATTEST:

Karen Sublett, City Clerk

APPROVED AS TO FORM:



Gary E. Rebenstorf, Director of Law

**ATTACHMENT A
LEASES**

1. The Commercial Lease for 1541S. 151st West by and between Coleman Lockett and Becky Lockett as Lessors and Dean Loesch as Lessee, executed January 1, 2010.
2. The Commercial Lease for 1547S. 151st West by and between Coleman Lockett and Becky Lockett as Lessors and Steve Peterson as Lessee, executed March 30, 2010.
3. The Commercial Lease for 1549S. 151st West by and between Coleman Lockett and Becky Lockett as Lessors and Fred Booher as Lessee, executed January 1, 2010.
4. The Commercial Lease for 1551S. 151st West by and between Coleman Lockett and Becky Lockett as Lessors and Bite Me BBQ as Lessee, executed September 30, 2010.

City of Wichita
City Council Meeting
August 2, 2011

TO: Mayor and City Council

SUBJECT: Consent to Leasehold Mortgage and Subordination Agreement (Four-G, LLC)
(District I)

INITIATED BY: Office of Urban Development

AGENDA: Consent

Recommendation: Approve the Leasehold Mortgage and Subordination Agreement, authorize the necessary signatures and hold the documents for delivery until September, 2011 as instructed by the Lender.

Background: On February 2, 2010, the City Council approved a letter of intent for economic development incentives, including issuance of not-to-exceed \$12,000,000 in industrial revenue bonds (IRBs), for the benefit of Four-G, LLC to promote the development of a Marriott Fairfield Inn and Suites Hotel as part of the WaterWalk Redevelopment Project. The ground under the Marriott Fairfield Inn and Suites Hotel is leased (“Ground Lease”) from the City of Wichita to Four-G, LLC, the Marriott Fairfield Inn and Suites developer, for an initial period of 99 years.

The City of Wichita was required to subordinate its interest in the Ground Lease, through a Subordination Agreement, to Standard Insurance Company (“Standard”) so Four-G, LLC could acquire construction financing. This Subordination Agreement was approved by the City Council on June 8, 2010 at the same time the Ground Lease was approved. Upon completion of the hotel, the construction loan was refinanced with the issuance of IRBs, which were purchased by Standard. The IRB financing was finally issued in June of 2011 for an amount of \$9,574,400 and the Marriott Fairfield Inn and Suites opened on July 1, 2011.

Analysis: Standard Insurance Company and Four-G, LLC have negotiated an inter-creditor agreement with another lender for a commercial loan insured by the Small Business Administration (SBA) as part of the permanent financing for the hotel project. The SBA loan also requires a Leasehold Mortgage and Subordination Agreement between Standard, Four-G and the new lender. Pursuant to Article 10 of the Ground Lease, approved June 8, 2010, any additional subordination requires the consent of the City. The SBA loan is scheduled to close in September 2011.

Financial Considerations: None.

Goal Impact: Economic Vitality and Affordable Living; Core Area and Neighborhood. Development of a hotel in the WaterWalk area will provide a major impetus to the success of an anchor for downtown revitalization.

Legal Considerations: The attached agreement has been reviewed and approved as to form by the Law Department.

Recommendations/Actions: It is recommended that the City Council approve the Leasehold Mortgage and Subordination Agreement, authorize the necessary signatures and direct staff to hold the documents for delivery until September, 2011 as instructed by the Lender.

Attachments: Leasehold Mortgage and Subordination Agreement

LEASEHOLD MORTGAGE

This LEASEHOLD MORTGAGE is made this _____ day of _____, 2011, by and between Four-G, LLC, a Kansas Limited Liability Company, of Wichita, Kansas, (hereinafter "Mortgagor"), having its principal office at 9430 E. Central, Suite A. Wichita, KS 67206, and Frontier Financial Partners, Inc., a Kansas Corporation (hereinafter "Mortgagee"), having its principal office at 1512 W. 6th Avenue, Suite E, Emporia, KS 66801.

For and in consideration of the debt referred to below, which is owed by Mortgagor to Mortgagee, Mortgagor grants and mortgages to Mortgagee all of the following described property located in Sedgwick County, Kansas (the "Property"):

The leasehold estate held by the Mortgagor pursuant to a WaterWalk Ground Lease No. 4 by and between City Wichita, Kansas, as LESSOR, and Four-G, LLC, as LESSEE, dated June 30, 2010, the existence of which is referenced in the "Memorandum of Lease" filed for record June 30, 2010, as Doc. #/FLM-PG: 29151759 in the office of the Sedgwick County, Kansas Register of Deeds, and relates to the real property described in EXHIBIT A attached hereto and incorporated herein by reference.

Together with all fixtures, improvements, rights, privileges, easements, hereditaments and appurtenances belonging or pertaining to the Property, the rents and profits of the Property, and all equipment and property of any nature now or hereafter attached to or used in connection with the Property hereafter attached to or used in connection with the Property (all of the above are deemed fixtures and are included with the term "Property" as used in this Leasehold Mortgage).

Mortgagor and Mortgagee agree as follows:

1. Promissory Note: Future Advances. This Leasehold Mortgage is given as security for the performance of the covenants contained in this Leasehold Mortgage, and as security for the payment of the balance due under a Promissory Note in the amount of Three Million Nine Hundred Seventy One Thousand and no/100ths-----DOLLARS (\$3,971,000.00), dated _____ . This Leasehold Mortgage also secures the payment of any and all extension agreements or renewal notes that may be given from time to time in the event the time for payment of the Promissory Note is extended or the terms of the Promissory Note are modified. This Leasehold Mortgage also secures all additional indebtedness of Mortgagor to Mortgagee for loan proceeds used for any costs associated with the development and construction of improvements by Mortgagor on the Property, of any kind or nature, previously or later arising, whether or not matured, direct, optional, obligatory, contingent, or primary. This Leasehold Mortgage also secures any extensions of renewals of the additional debt. Any changes in the terms of any debt secured by this Leasehold Mortgage shall not affect the liability of Mortgagor hereunder or the security of this Leasehold Mortgage. All of the indebtedness secured by this Leasehold Mortgage, together with all amounts in excess of the principal debt that may be advanced by the Leasehold Mortgagee from time to time to protect the Property or the security interest created by this document (as provided in this Leasehold Mortgage) shall have the same priority over any intervening encumbrances as that priority afforded the original principal debt secured. Nothing in this Leasehold Mortgage shall be construed to obligate Mortgagee to make any renewals or additional loans or advances.

2. Mortgagor's Covenants. Mortgagor covenants to timely make all payments due on the Promissory Note; to keep the Property in good condition and repair; to maintain good and sufficient title to the Property against any legal challenges; to maintain in effect a loan policy of leasehold title insurance in favor of and acceptable to Mortgagee; to timely pay all general and special taxes, assessments and other charges that may be levied or assessed upon the Property, and to furnish Mortgagee with receipts showing such payments, if demanded; to pay all present and future debts for repairs or improvements that may become liens upon the Property; to comply with and cause compliance with all requirements of any governmental authority relating to the Property; and to promptly repair or rebuild any improvements which are damaged by casualty or affected by condemnation proceedings or the exercise of eminent domain. Mortgagor further covenants not to commit or allow any waste on the Property or to initiate, join in or consent to any change in any public or private restrictive covenant, zoning ordinance or regulation limiting or defining the uses to which the Property may be put. Mortgagor shall maintain in good standing and in full force and affect its company status under the laws of the state of its formation, and its authority to do business in the State of Kansas.

3. Casualty Insurance. Throughout the life of this Leasehold Mortgage, Mortgagor shall keep all present and future improvements on the Property insured by companies approved by Mortgagee against fire, earthquake, flood, all hazards included within the term "extended coverage" insurance, and such other hazards as Mortgagee may from time to time require. This insurance shall be maintained in an amount at least equal to the greater of (a) the unpaid balance of all debts secured by this Leasehold Mortgage, or (b) an amount sufficient to prevent the operation of a co-insurance clause in the policy (e.g., ensuring that partial losses

are fully covered). All insurance policies shall be in a form acceptable to Mortgagee, and shall include a long form noncontributory mortgagee clause in favor of Mortgagee, and in form acceptable to Mortgagee. Mortgagor shall promptly pay all bills for insurance premiums. Mortgagor shall promptly furnish to Mortgagee copies of the policies, renewal notices and premium receipts, if requested. If Mortgagee at any time deems the insurance coverage unsatisfactory, it may obtain additional insurance, adding the expense to the debt secured by this Leasehold Mortgage. In the event the Property is damaged by casualty or a liability claim is made, Mortgagor shall immediately file a claim with the insurance company and notify Mortgagee of the claim. Mortgagee may take such actions as it deems necessary regarding the claim, and shall be reimbursed by Mortgagor upon demand for all costs (including without limitation attorney's fees) regarding such actions. Any amounts paid by virtue of such claims shall be paid to Mortgagee alone, to be applied to restoration of the Property or to such other purposes as Mortgagee in its sole discretion deems appropriate. Mortgagee may assign the insurance policies to any purchasers of the property at a foreclosure sale.

4. Taxes. Mortgagor shall pay all taxes, assessments and other charges in connection with the Property. Mortgagor shall promptly furnish Mortgagee with notices of any such charges due, and receipts evidencing such payments, if requested.

5. Condemnation. If any portion of the Property is taken under the power of eminent domain, or conveyed in lieu of condemnation, Mortgagor shall immediately notify Mortgagee of the taking or conveyance. The proceeds of any condemnation awards, or payments for conveyances in lieu of condemnation, shall at the election of Mortgagee be (a) applied to the indebtedness secured by this Leasehold Mortgage, (b) paid to Mortgagor for the purpose of restoring any taken portion of the Property, or (c) applied for any purpose satisfactory to Mortgagee. Mortgagee may enter its appearance in any formal or informal condemnation proceeding, and Mortgagor agrees to pay any attorney's fees incurred by Mortgagee in any such proceeding. Mortgagee may terminate this Leasehold Mortgage and declare all amounts secured hereby immediately due and payable if a substantial portion of the Property is taken or conveyed in lieu of condemnation. Mortgagor shall execute any assignments or any judgments, decrees, awards, claims or payments, as Mortgagee may require.

6. Action by Mortgagee. If (a) Mortgagor fails to perform the covenants contained in this Leasehold Mortgage; or (b) any action or proceeding is commenced which affects the Property or the lien of this Leasehold Mortgage, including without limitation proceedings in eminent domain, insolvency, city ordinance enforcement or bankruptcy, then at Mortgagee's option Mortgagee may make such appearances, disburse such sums and take such actions as Mortgagee deems necessary to protect Mortgagee's interest. These actions may include without limitation the performance of any act required of Mortgagor under this Leasehold Mortgage, the making of payments under any other encumbrances, and settling and payment of any claims which might affect the Property, the redemption of the Property from any tax sales or other foreclosures, payment of attorney's fees, and entry upon the Property to make repairs. Any amounts paid by Mortgagee, with interest at the rate stated in the Promissory Note, shall become additional indebtedness secured by this Leasehold Mortgage. Unless

Mortgagor and Mortgagee agree to other terms of payment, such amounts shall be payable upon demand. Nothing stated in this paragraph shall require Mortgagee to incur any expense or do any act. Mortgagee shall be subrogated to any liens or claims which it pays, whether or not the same have been released of record.

7. Events of default; Acceleration. Mortgagee may, at its sole option, declare all of the amounts secured by this Leasehold Mortgage (including prior and subsequent debts) to be immediately due and payable, and Mortgagee may pursue any remedies permitted by this Mortgage, if (a) Mortgagor defaults under or breaches any covenant of this Leasehold Mortgage or any promissory note secured by this Leasehold Mortgage; (b) Mortgagor conveys, contracts to convey, grants any option for the purchase of, encumbers, allows the encumbrance of (whether voluntarily or involuntarily), sells under contract for deed or installment land contract, leases with an option to purchase, or otherwise transfers all or any part of the Property or any interest or estate of any nature in the Property; provided however, this clause shall not apply to this Leasehold Mortgage or the first leasehold mortgage from Mortgagor to Standard Insurance Company, its successors or assigns; (c) Mortgagor or any partner (if any) of Mortgagor voluntarily files a petition under the federal Bankruptcy Code or under any state bankruptcy or insolvency act or files an answer in any involuntary proceeding admitting insolvency or inability to pay debts; (d) Mortgagor or any partner (if any) in Mortgagor fails within thirty days to obtain a vacation or stay of any involuntary proceedings brought for the bankruptcy, reorganization, dissolution or liquidation of Mortgagor; (e) a trustee or receiver is appointed for Mortgagor or any partner (if any) in Mortgagor or any of Mortgagor's property or the property of any partner in Mortgagor; (f) Mortgagor or any partner (if any) in Mortgagor makes an assignment for the benefit of creditors; (g) any foreclosure proceeding is instituted by the holder of any deed of trust, mortgage, or lien upon the Property; or (h) at any time, during the life of this Leasehold Mortgage, Mortgagee in its sole opinion believes that the Property and all other security given to secure the note, is insufficient to secure the payment of remaining indebtedness.

8. Alternative Due-On-Encumbrance Clause. Should either (a) any terms or provisions of Section 7 (b) of this Leasehold Mortgage above be held by a final and unappealable (or unappealed) judgment of any court to be invalid or unenforceable, or (b) Mortgagee so elects by an instrument in writing sent to Mortgagor at the Property and recorded in the same office where this Mortgage is recorded, then Section 7 (b) of this Leasehold Mortgage shall be deemed deleted from this Leasehold Mortgage and the following phrase shall be deemed substituted therefore:

(b) Mortgagor sells, conveys, contracts to convey, sells under contract for Deed or other installment land contract, or otherwise transfers any interest or estate in the Property;

In such event the following shall be deemed added to this Leasehold Mortgage as an additional provision hereof:

If Mortgagor grants any options for the purchase of the Property; encumbers, allows the encumbrance of the Property (whether voluntarily or involuntarily); grants further mortgages or liens affecting, permits the filing or perfection of a lien against; leases the Property with an option to purchase; creates or allows the creation of any security interest in any fixtures or equipment located on the Property; allows or permits a transfer by devise or descent or by operation of law of any interest or estate in the Property. If the occurrence in question is for any reason ineffective to permit Mortgagee to exercise its remedies under Section 7 (b) above; then in any such event Mortgagee may at its sole discretion, regardless of the length of time since the occurrence of the event, (a) increase the interest rate on any or all the remaining indebtedness secured by this Leasehold Mortgage to 15 percent (if such rate exceeds the then applicable highest legal rate of interest for the indebtedness, then such rate shall be the same as the highest legal rate), (b) charge to mortgagor a special fee equal to 15 percent of the outstanding indebtedness secured by this Leasehold Mortgage as of the time of the event, such fee to be due and payable from Mortgagor ten days after the date of the notice described below, or (c) amend (without the further consent of Mortgagor, such consent being hereby given by Mortgagor's execution of this Leasehold Mortgage) the promissory notes or other evidences of the indebtedness then secured by this Leasehold Mortgage to add thereto such late charges and prepayment penalties as Mortgagee may in its sole discretion determine and delete there from any provisions contrary to the new additions, as Mortgagee in its sole discretion shall determine. Any actions of Mortgagee pursuant to the above authorizations shall be taken by a notice in writing addressed to Mortgagor at the Property, and shall be effective as of the date of the notice regardless of when or whether Mortgagor actually receives the notice. The taking of any such actions by Mortgagee upon any one occurrence shall not preclude Mortgagee from taking further actions by reason of the same or any further occurrences.

The deletion of Section 7 (b) from this Leasehold Mortgage and the addition of the above provision, if such changes become effective, shall be deemed to have occurred at the execution of this Leasehold Mortgage and shall relate back and be deemed fully effective as if the same were original provisions of this Leasehold Mortgage.

9. Bankruptcy; Assumption or Assignment. The parties agree that Mortgagor has substantial duties of performance apart from its mere financial obligations under this Mortgage, the Promissory Note and other debt instruments or obligations which could not adequately and fully perform the covenants to be performed by Mortgagor in this Leasehold Mortgage. The parties also agree that this Leasehold Mortgage is an agreement for the making of loans and for the extending of debt financing or financial accommodations. No assumption of or assignment of this Leasehold Mortgage shall be allowed in bankruptcy without express written approval of the Mortgagee. Should an assumption of or assignment of this Leasehold Mortgage be permitted in violation of this covenant, the parties agree that Mortgagee will not have adequate assurance of performance unless and until Mortgagee is allowed access to adequate financial and other information to satisfy itself that the trustee or proposed assignee is fully able to assume the financial and personal covenants of Mortgagor under this agreement, in full accordance of its terms, and that sufficient collateral is pledged and sufficient bonds or

letters of credit are posted by the trustee or proposed assignee to guarantee performance of such obligations. The parties further agree that the definitions of the term "adequate assurance" as set forth in Section 365 (b) (3) of the Bankruptcy Code of 1978 shall be applicable directly or by analogy to any determination of adequate assurance in connection with this Leasehold Mortgage.

10. Bankruptcy; Adequate Protection. In the event Mortgagor becomes a debtor in bankruptcy, the debtor in possession or trustee shall not be permitted to use, sell or lease any of the property, whether or not in the ordinary course of business, without providing adequate protection to Mortgagee. The parties agree that the language in Section 361 of the Bankruptcy Code of 1978 shall be the definition of the term "adequate protection" in connection with any use, sale or lease of the Property. The cash payment referred to in that section shall mean the full payments required under the Promissory Note and all other indebtedness which this Leasehold Mortgage secures, plus payment representing the full replacement value of the property used, sold or leased; the replacement liens referred to in that section shall mean liens on property the actual market value of which is equal to or greater than the replacement cost of the Property used, sold or leased; and the term "indubitable equivalent" as used in that section shall mean protection afforded by either grants or administrative expense priority, grants to Mortgagee of ownership interest in a continuing business surviving the bankruptcy, or grants to Mortgagee of protected securities issued by a continuing business surviving the bankruptcy, which completely compensate Mortgagee for the loss of the present value (computed at the then market rate of interest for commercial loans) of its interest for commercial loans and of its interest in the Property. For purposes of computation, the value of the Property shall be the actual market cost of replacement real estate in approximately the same location and condition as the Property, and with similar improvements.

11. Bankruptcy; Stay of Collection. The parties agree that because of the extreme financial importance to Mortgagee of this transaction, Mortgagee will be irreparably harmed by any stay of its collection efforts or the exercise of its remedies under this Leasehold Mortgage.

12. Bankruptcy; Reorganization of Mortgagor. The parties agree that in the event a plan of reorganization is proposed under Chapter 11 of the Bankruptcy Code, the plan will be fair and equitable to Mortgagee, as a secured creditor, only if Mortgagee realizes under the plan the indubitable equivalence of its interest in the Property. The term "indubitable equivalent" in such context shall have the same meaning as that given in Section 10 of the Leasehold Mortgage.

13. Set-Off. Upon default by Mortgagor, Mortgagee (or the holder or owner of any debt secured by this Leasehold Mortgage) shall immediately have the right without further notice to Mortgagor to set off against the Promissory Note and any other debts secured by this Leasehold Mortgage all debts of Mortgagee (or such holder or owner) to Mortgagor, whether or not then due.

14. Severability; Successors. The covenants contained in this Leasehold Mortgage are severable, and should any provision be declared invalid or unenforceable, the remaining provisions shall remain in full force and effect and shall in no way be impaired. The covenants, terms and provisions of this Leasehold Mortgage are binding upon and are individually and jointly applicable to all individuals and entities included with the term "Mortgagor," and the successors, heirs and assigns of each such Mortgagor. All covenants, terms and provisions shall insure to the benefit of the Mortgagee and its successors, heirs, assigns, and future holders or owners of the Promissory Note and other secured indebtedness. All covenants of this Leasehold Mortgage are the joint and several obligations of Mortgagors, if there is more than one Mortgagor, and of all partners in Mortgagor, if Mortgagor is a partnership. The captions of the sections of this Leasehold Mortgage shall not be used in the interpretation of this Leasehold Mortgage.

If all payments are made as provided in this Leasehold Mortgage, and if all covenants in this Mortgage are fulfilled, this Leasehold Mortgage shall be void, and shall be released. If however, Mortgagor (a) defaults in the payment of the Promissory Note or any other indebtedness secured by this Leasehold Mortgage, or (b) violates any terms of this Leasehold Mortgage, then all of the amounts secured by this Leasehold Mortgage shall, at the sole option of the Mortgagee, become immediately due and payable without notice. In such event this Leasehold Mortgage shall become absolute, and Mortgagee may immediately, or at any time thereafter, cause this Leasehold Mortgage to be foreclosed in the manner prescribed by law. Mortgagor shall bear all expenses of any foreclosure proceeding which is terminated before sale at Mortgagor's request. Mortgagee shall be entitled to have a receiver appointed to take charge of the property, rent the Property, and collect the rents and profits of the Property, under direction of the court. Any amounts collected by the receiver shall be applied, under direction of the court, to the payment of any judgment rendered, and for the payment of any amounts found due upon foreclosure of this Leasehold Mortgage. Any proceeds of the foreclosure sale which may remain after payment of amounts due to Mortgagee and junior mortgagees and lienholders shall be applied to principal and interest then due (by virtue of acceleration or otherwise) under senior mortgages and other encumbrances.

Mortgagor on behalf of himself/herself and each and every person claiming by, through or under Mortgagor, hereby waives any and all rights of redemption, statutory or otherwise, without prejudice to Mortgagee's right to any remedy, legal or equitable, which Mortgagee may pursue to enforce payment or to effect collection of all or any part of the indebtedness secured by this Leasehold Mortgage, and without prejudice to Mortgagee's rights to a deficiency judgment or any other appropriate relief in the event of foreclosure of this Leasehold Mortgage.

The loan secured by this Leasehold Mortgage was made under a United States Small Business Administration (SBA) nationwide program which uses tax dollars to assist small business owners. If the United States is seeking to enforce this Leasehold Mortgage, then

under SBA regulations: a) when SBA is the holder of the Promissory Note, this Leasehold Mortgage and all documents evidencing or securing this loan will be construed in accordance with federal law; b) Mortgagee or SBA may use local or state procedures for purposes such as filing papers, recording documents, giving notice, foreclosing liens, and other purposes. By using these procedures, SBA does not waive any federal immunity from local or state control, penalty, tax or liability. Mortgagor nor any guarantor may claim or assert against SBA any local or state law to deny any obligation of Mortgagor, or defeat any claim of SBA with respect to this loan.

Any clause in this Leasehold Mortgage requiring arbitration is not enforceable when SBA is the holder of the Promissory Note secured by this Leasehold Mortgage.

Intending to be fully bound, Mortgagor has executed the Leasehold Mortgage the day and year first above written.

Four-G, LLC, a Kansas Limited Liability Company

BY: _____
James E. Korroch, Manager

ACKNOWLEDGEMENT

STATE OF KANSAS)
) SS:
COUNTY OF SEDGWICK)

On this ____ day of _____, 2011, before me appeared James E. Korroch, to me personally known, who being by me duly sworn, did say that is is the Manager of Four-G, LLC, a Kansas Limited Liability Company, and that said Leasehold Mortgage was signed on behalf of Four-G, LLC, a Kansas Limited Liability Company, and said James E. Korroch, Manager, acknowledges said Leasehold Mortgage to be the free act and deed of said Four-G, LLC, a Kansas Limited Liability Company, and that he executed the same for the purposes therein stated.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Notarial Seal, the day and year first above written.

Notary Public

My appointment expires: _____

EXHIBIT A

Commencing at the easterly most south corner of Lot 1, Block 5, Waterwalk Phase 2 Addition, an addition to Wichita, Sedgwick County, Kansas; thence N 00°00'13" W, along the east line of said Lot 1, 207.88 feet; thence S 89°59'47" W, perpendicular to said east line, 12.50 feet for a place of beginning; thence S 00°00'13" E, parallel with said east line, 140.51 feet; thence S 45°00'00" W, 76.25 feet; thence S 89°59'47" W, parallel with the south line of said Lot 1, 119.26 feet; thence N 35°19'20" W, 21.48 feet; thence N 00°00'13" W, parallel with said east line, 176.40 feet; thence N 89°59'47" E, parallel with said south line, 26.26 feet; thence N 00°00'13" W, parallel with said east line, 0.50 feet; thence N 89°59'47" E, parallel with said south line, 159.33 feet to the place of beginning.

ASSIGNMENT OF LEASES AND RENTS

THIS ASSIGNMENT OF LEASES AND RENTS (as the same may be amended, modified or supplemented from time to time, the "Assignment"), dated as of the ____ day of _____, 2011, from **Four-G, LLC** (the "Assignor"), in favor of Frontier Financial Partners, Inc. (the "Assignee"), for further assignment by Assignee to the UNITED STATES SMALL BUSINESS ADMINISTRATION, an agency of the United States (the "SBA"), recites and provides:

Assignee has agreed to make a loan to Assignor in the principal amount of **Three Million Nine Hundred Seventy One Thousand and 00/100ths Dollars (\$3,971,000.00)** (the "Loan") to provide financing for acquisition of the leasehold interest in the land described in Exhibit A hereto and the improvements thereon situated in the **County of Sedgwick, Kansas** (collectively, the "Premises"). The Loan is evidenced by a promissory note of even date herewith (as the same may be amended, modified or supplemented from time to time, the "Note") made by Assignor and payable to the order of Assignee in the principal amount of **\$3,971,000.00**. The Note is secured, in part, by a leasehold mortgage of even date herewith (as the same may be amended, modified or supplemented from time to time, the Leasehold Mortgage") from Assignor to Assignee. Terms defined in the Note and the Leasehold Mortgage shall have the same defined meanings when used in this Assignment. As a condition to making the Loan, the Assignee has required an assignment to the Assignee and any subsequent holder of the Note of all leases (individually, a "Lease," and collectively, the "Leases") of or relating to Assignor's interest in the Premises or any part thereof, now or hereafter existing, and all rents, issues and profits (the "Rents") now or hereafter arising from Assignor's interest in the Premises or any part thereof, all in accordance with the terms and conditions set forth herein.

NOW, THEREFORE, for and in consideration of the agreement of Assignee to make the Loan and as ADDITIONAL SECURITY for the payment of the Note, Assignor agrees as follows:

- I. **Assignment of Leases.** Assignor hereby assigns, transfers and sets over to Assignee, and any subsequent holder of the Note, all Assignor's right, title and interest in and to all Leases and all renewals or extensions thereof, together with all the Rents, now existing or hereafter arising. Prior to the election of Assignee to collect the Rents upon the occurrence of an Event of Default under the Leasehold Mortgage, Assignor shall have the right to collect and dispose of the Rents without restriction. Further, Assignor assigns to SBA all of its rights, powers and interests in assets, tangible and intangible, that it has acquired in conjunction with the Leases so that it may operate the business on the Premises. This general assignment includes, but is not limited to, Assignor's rights, powers and interest in the **WaterWalk Ground Lease No. 4, HOTEL PARKING AND TRASH AGREEMENT, Partial Assignment of WATERWALK DEVELOPMENT AGREEMENT, SIDEWALK ACCESS EASEMENT AGREEMENT AND TRANSFORMER EASEMENT AGREEMENT**, subject only to a prior assignment to Standard Insurance Company, if any.
- II. **Delivery of Leases.** All Leases currently in effect with respect to the Premises have been delivered to Assignee, are in full force and effect as of the date of this Assignment and neither Assignor nor any tenant is in default thereunder. Assignor shall not make any subsequent agreement for the lease of the Premises or any part thereof except in the ordinary course of business in accordance with the provisions of the Leasehold Mortgage. All such subsequent Leases shall be subject to the prior written approval of Assignee, which approval shall not be unreasonably withheld, in accordance with the provisions of the Leasehold Mortgage.

- III. **No Modification of the Leases.** Without the prior written consent of Assignee, which consent shall not be unreasonably withheld, Assignor shall not
- A. Cancel, terminate or accept any surrender of the Leases;
 - B. Accept any prepayments for more than thirty (30) days of installments of rent under any of the Leases;
 - C. Modify or abridge any of the terms, covenants and conditions of any of the Leases so as to reduce the terms thereof or the rental payments thereunder; or
 - D. Change any renewal privileges contained in any of the Leases.
- IV. **Representations and Warranties.** Assignor represents and warrants that
- A. Assignor has not previously sold, assigned, transferred, mortgaged or pledged the Leases or the Rents, whether now due or hereafter to become due; **EXCEPT an assignment to Standard Insurance Company, the first mortgage lender**, which Assignee hereby acknowledges;
 - B. The rents now due or to become due for any periods subsequent to the date hereof have not been collected and payment thereof has not been anticipated for a period of more than one (1) month in advance, waived or released, discounted, set off or otherwise discharged or compromised except as set forth in the Leases;
 - C. It has not received any funds or deposits from any tenant for which credit has not already been made on account of accrued income other than the security deposits provided for in the Leases;
 - D. It has not received any bona fide and acceptable offer to purchase the Premises or any part thereof which would in any way affect any right or option of first refusal to purchase all or any portion of the Premises now contained in any Lease; and
 - E. It has not done anything which might prevent Assignee from or limit Assignee in operating under or enforcing any of the provisions hereof.

Assignor shall act in good faith to enforce or secure the performance of each and every obligation, covenant, condition and agreement to be performed by any tenants under all the Leases.

- V. **Remedies upon Default.** Immediately upon the occurrence of an Event of Default under the Leasehold Mortgage, and the expiration of any applicable cure period, Assignee is hereby expressly and irrevocably authorized to enter and take possession of the Premises by actual physical possession, or by written notice served personally upon, or sent by registered or certified mail, postage prepaid, to Assignor, as Assignee may elect, and no further authorization shall be required. Following any such entry and taking of possession, Assignee may:
- A. Manage and operate the Premises or any part thereof;
 - B. Lease any part or parts of the Premises for such periods of time, and upon such terms and conditions as Assignee may, in its discretion, deem proper;
 - C. Enforce any of the Leases;

- D. Demand, collect, sue for, attach, levy, recover, receive, compromise and adjust, and make, execute and deliver receipts and releases for all Rents that may then or may thereafter become due, owing or payable with respect to the Premises, or any part thereof, from any present or future lessees, tenants, subtenants or occupants thereof;
- E. Institute, prosecute to completion or compromise and settle, all summary proceedings and actions for rent or for removing any and all lessees, tenant, subtenants or occupants of the Premises or any part or parts thereof;
- F. Enforce or enjoin or restrain the violation of any of the terms, provisions and conditions of any of the Leases;
- G. Make such repairs and alterations to the Premises as Assignee may, in its discretion, deem proper;
- H. Pay from and out of the Rents collected or from or out of any other funds, the insurance premiums and any other taxes, assessments, water rates, sewer rates or other governmental charges levied, assessed or imposed against the Premises or any portion thereof, and also any and all other charges, costs and expenses which it may deem necessary or advisable for Assignee to pay in the management or operation of the Premises, including (without limiting the generality of any rights, powers, privileges and authorities conferred in this Assignment) the costs of such repairs and alteration, commissions for renting the Premises, or any portions thereof, and legal expenses in enforcing claims, preparing papers or for any other services that may be required; and
- I. Generally, do, execute and perform any other act, deed, matter or thing whatsoever that ought to be done, executed and performed in and about or with respect to the Premises as fully as Assignor might do.

Assignee shall apply the net amounts of any Rents received by it from the Premises, after payment of proper costs and charges to the reduction and payment of the indebtedness evidenced by the Note and secured by the Leasehold Mortgage (the "Secured Indebtedness"). Assignor agrees not to seize or detain any property hereby assigned, transferred or set over to Assignee.

VI. **Disposition of Rents Upon Default.** Assignor hereby irrevocably directs the tenants under the Leases upon demand and notice from Assignee of any Event of Default, to pay to Assignee all Rents accruing or due under the Leases from and after the receipt of such demand and notice. Such tenants in making such payments to Assignee shall be under no obligation to inquire into or determine the actual existence of any such Event of Default claimed by Assignee.

VII. **Attornment.** To the extent not provided by applicable law, each Lease of the Premises or of any part thereof shall provide that in the event of the enforcement by Assignee of the remedies provided for by law or by this Assignment, the tenant thereunder will, upon request of any person succeeding to the interest of Assignor as a result of such enforcement, automatically become the tenant of such successor-in-interest, without change in the terms or other provisions of such Lease; provided, however, that the successor-in-interest shall not be bound by:

- A. Any payment of rent or additional rent for more than one (1) month in advance, except prepayments in the nature of security for the performance by the tenant of its obligations under the Lease; or
- B. Any amendment or modification of the Lease made without the consent of Assignee or such successor-in-interest.

Each Lease also shall provide that, upon request by the successor-in-interest, the tenant shall execute and deliver an instrument or instruments confirming such attornment.

VIII. **TENANTS**

The current tenants of the Premises ("Tenants") are as follows:

Four-G, LLC

IX. **Release.** Upon payment in full of the Secured Indebtedness, as evidenced by a recorded satisfaction or release of the Leasehold Mortgage as well as any sums which may be payable hereunder, this Assignment shall become and be void and of no effect.

X. **Amendments and Discharge.** No change, amendment, modification, cancellation or discharge of this Assignment, or any part hereof, shall be valid unless Assignee shall have consented thereto in writing.

XI. **Successors and Assigns.** The terms, covenants and conditions contained herein shall inure to the benefit of, and bind Assignor, Assignee and their successors and assigns.

XII. **Governing Law.** This Assignment shall be governed by and construed in accordance with the laws of the State of Kansas without reference to conflict of laws principles, except that federal law shall govern when SBA is the holder of the Note as more fully set forth below.

The Loan secured by this Assignment was made under a United States Business Administration (SBA) nationwide program which uses tax dollars to assist small business owners. If the United States is seeking to enforce this Assignment, then under SBA regulations:

- (a) When SBA is the holder of the Note, this Assignment and all documents evidencing or securing this Loan will be construed in accordance with federal law.
- (b) Assignee or SBA may use local or state procedures for purposes such as filing papers, recording documents, giving notice, foreclosing liens, and other purposes. By using these procedures, SBA does not waive any federal immunity from local or state control, penalty, tax or liability. No Borrower or Guarantor may claim or assert against SBA any local or state law to deny any obligation of Borrower, or defeat any claim of SBA with respect to this Loan.

Any clause in this Assignment requiring arbitration is not enforceable when SBA is the holder of the Note secured by this Assignment.

XIII. **Severability.** If any provision of this Assignment, or the application hereof to any person, entity or circumstance, shall to any extent be invalid or unenforceable, the remainder of the provisions of this Assignment, or the application of such provision to other persons, entities or circumstances, shall not be affected thereby, and each provision of this Assignment shall be valid and enforceable to the fullest extent permitted by law.

IN WITNESS WHEREOF, the undersigned has executed this Assignment as of the date first above written.

ASSIGNOR:
Four-G, LLC

BY: _____
James E. Korroch, Manager

STATE OF KANSAS)
) to wit:
County of Sedgwick)

The foregoing instrument was acknowledged before me on this ____ day of _____, 2011 in the above jurisdiction by **James E. Korroch, as Manager of Four-G, LLC.**

Notary Public

My appointment expires:_____

EXHIBIT A

Commencing at the easterly most south corner of Lot 1, Block 5, Waterwalk Phase 2 Addition, an addition to Wichita, Sedgwick County, Kansas; thence N 00°00'13" W, along the east line of said Lot 1, 207.88 feet; thence S 89°59'47" W, perpendicular to said east line, 12.50 feet for a place of beginning; thence S 00°00'13" E, parallel with said east line, 140.51 feet; thence S 45°00'00" W, 76.25 feet; thence S 89°59'47" W, parallel with the south line of said Lot 1, 119.26 feet; thence N 35°19'20" W, 21.48 feet; thence N 00°00'13" W, parallel with said east line, 176.40 feet; thence N 89°59'47" E, parallel with said south line, 26.26 feet; thence N 00°00'13" W, parallel with said east line, 0.50 feet; thence N 89°59'47" E, parallel with said south line, 159.33 feet to the place of beginning.

SUBORDINATION AGREEMENT

THIS SUBORDINATION AGREEMENT ("Subordination Agreement") made as of the ____ day of _____, 2011, by and among Frontier Financial Partners, Inc., 1512 W. 6th Avenue, Suite E, Emporia, KS 66801, Attn: Wayne Symmonds for further assignment to the UNITED STATES SMALL BUSINESS ADMINISTRATION, an agency of the United States ("Lender"), Four-G, LLC, 9340 E. Central, Suite A, Wichita, ,KS 67206, Attention: James Korroch ("Tenant"), and The City of Wichita, a corporate body politic and political subdivision of the State of Kansas, c/o City Clerk 455 N. Main, 13th Floor, Wichita, Kansas 67202 ("Landlord").

WITNESSETH:

WHEREAS, pursuant to that certain WaterWalk Ground Lease No. 4 dated as of June 30, 2010 (together with all addendums, amendments, modifications and supplements thereto is collectively hereinafter the "Lease"), with respect to the real property legally described on Exhibit A attached hereto (the "Demised Premises"), Tenant leases the Demised Premises;

WHEREAS, Lender has made, or may agree to make a loan to Tenant (the "Loan") conditioned on among other conditions, the full execution of this Subordination Agreement;

WHEREAS, the Loan will or may be secured by, among other things, a mortgage, assignment of the Lease and Rents, and/or a security agreement (collectively the "Mortgage") made by Tenant to or for the benefit of Lender covering, among other things, Tenant's interest under the Lease, and Tenant's right, title and interest in and to the improvements constructed on the Demised Premises; recorded on _____.

WHEREAS, the parties hereto agree to make the Landlord's fee interest in the Demised Premises subject and subordinate to the Mortgage, pursuant to the terms hereof.

NOW, THEREFORE, the parties hereto, in consideration of the covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, hereby agree as follows:

1. Provided that the Loan proceeds are used for any costs associated with the development and construction of improvements by Tenant on the Demised Premises, the Landlord's fee interest in the Demised Premises, and any right, title and interest of Landlord in and to the improvements thereof, are and shall be subject and subordinate to the Mortgage and the lien thereto to all the terms, conditions and provisions of the Mortgage and to each and every advance made or hereafter made under the Mortgage, and to all renewals, modifications, consolidations, replacements, substitutions and extensions of the Mortgage, including rights to hazard insurance proceeds resulting from damage to improvements, but only until the "Expiration Date" of the "Term" of the Lease (as those terms are defined under the Lease); provided however, and Lender agrees, that in the event of any act, omission or default by Tenant that would give Lender the right, either immediately or after the lapse of a period of time, to declare a default or breach under the Mortgage and elect one or more remedies, including but not limited to foreclosure of the

Mortgage, Lender will not exercise any such right until it has given written notice of such act, omission or default to Landlord and provided Landlord the right to cure for any applicable cure period set forth in the Mortgage. For purposes of the initial sentence in this paragraph, the proceeds of a loan that is limited to refinancing the remaining balance of an existing loan will be deemed to have been "used for any costs associated with the development and construction of improvements by Tenant on the Demised Premises if the proceeds of the original loan were so used.

2. The terms and provisions of Article X of the Lease are incorporated by reference herein for the purpose of the parties confirming to each other that each shall have the rights and obligations set forth in said Article X of Landlord as "Landlord" thereunder, Tenant as "Tenant" thereunder, and Lender as "Leasehold Mortgagee" thereunder, as if Lender was an actual party to the Lease.
3. Any notice, demand, statement, request or consent made hereunder shall be effective and valid only if in writing, referring to this Subordination Agreement, signed by the party giving such notice, and delivered either personally to such other party, or sent by nationally recognized overnight courier delivery service or by certified mail of the United States Postal Service, postage prepaid, return receipt requested, addressed to the other party as follows (or to such other address or person as either party or person entitled to notice may be notice to the other party specify):

To Lender: Frontier Financial Partners, Inc.
 1512 W. 6th Avenue, Ste E
 Emporia, KS 66801
 Attn: Wayne Symmonds

With a copy concurrently to: U.S. Small Business Administration

Fresno Commercial Loan Service Center
801 R. Street, Suite 101
Fresno, CA 93721-2365
Loan No. 41254250-01

and

To Tenant: Four-G, LLC
 9435 E. Central, Suite A
 Wichita, KS 67206
 Attention: James Korroch

with a copy concurrently to: Adams Jones Law Firm, P.A.
 1635 N. Waterfront Parkway, Suite 200
 Wichita, KS 67206
 Attention: Mert Buckley

To Landlord: c/o City Clerk
455 N. Main, 13th Floor
Wichita, KS 67202

Unless otherwise specified, notices shall be deemed given as follows: (i) delivered personally, when delivered, (ii) if delivered by nationally recognized overnight courier delivery service, on the day following the day such notice is sent, or (iii) if sent by certified mail, three (3) days after such notice has been sent.

4. This Subordination Agreement shall be interpreted and construed in accordance with and governed by the laws of the State of Kansas.
5. A fully-executed original of this Subordination Agreement may be recorded with the Sedgwick County, Kansas, Register of Deeds against the Demised Premises by either party hereto or their successors and assigns.

IN WITNESS WHEREOF, the parties hereto have duly executed this Subordination Agreement as of the day and year first above written .

"Lender"

Frontier Financial Partners, Inc.

BY: _____
Wayne C. Symmonds, President & CEO

"Tenant"

Four-G, LLC

BY: _____
James E. Korroch, Manager

"Landlord"

City of Wichita, Kansas

BY: _____
Carl Brewer, Mayor

Attest:

Karen Sublett, City Clerk

STATE OF KANSAS)
)
COUNTY OF LYON) SS

This instrument was acknowledged before me on _____, 2011, by
Wayne C. Symmonds, as President & CEO of Frontier Financial Partners, Inc.

NOTARY PUBLIC

My appointment expires:_____

STATE OF KANSAS)
)
COUNTY OF SEDGWICK) SS

This instrument was acknowledged before me on _____, 2011, by
James E. Korroch, as Manager of Four-G, LLC.

NOTARY PUBLIC

My appointment expires:_____

STATE OF KANSAS)
)
COUNTY OF SEDGWICK) SS

This instrument was acknowledged before me on _____, 2011, by
Carl Brewer, as Mayor of the City of Wichita, Kansas, a municipality.

NOTARY PUBLIC

My appointment expires:_____

Approved as to form:

Gary E. Rebenstorf, City Attorney

EXHIBIT A

Commencing at the easterly most south corner of Lot 1, Block 5, Waterwalk Phase 2 Addition, an addition to Wichita, Sedgwick County, Kansas; thence N 00°00'13" W, along the east line of said Lot 1, 207.88 feet; thence S 89°59'47" W, perpendicular to said east line, 12.50 feet for a place of beginning; thence S 00°00'13" E, parallel with said east line, 140.51 feet; thence S 45°00'00" W, 76.25 feet; thence S 89°59'47" W, parallel with the south line of said Lot 1, 119.26 feet; thence N 35°19'20" W, 21.48 feet; thence N 00°00'13" W, parallel with said east line, 176.40 feet; thence N 89°59'47" E, parallel with said south line, 26.26 feet; thence N 00°00'13" W, parallel with said east line, 0.50 feet; thence N 89°59'47" E, parallel with said south line, 159.33 feet to the place of beginning.

CITY OF WICHITA
City Council Meeting
August 2, 2011

TO: Mayor and City Council

SUBJECT: Acquisition by Eminent Domain of Tracts Required for the Integrated Local Water Supply Plan (Harvey County)

INITIATED BY: Office of Property Management

AGENDA: Consent

Recommendation: Adopt and place on first reading the ordinance providing for the acquisition by eminent domain of certain real properties.

Background: On August 3, 1993, the City Council approved the Water Supply Plan prepared by Burns & McDonnell/MKEC Engineering Consultants. The Plan identified cost-effective water resource projects to meet the City's future water needs. On October 10, 2000, the City Council approved the projects and implementation of the plan. One portion of the Water Supply Plan is the groundwater recharge project. The groundwater recharge includes the capture of above base flow water (water which is generated from rainfall runoff above the base river flow) in the Little Arkansas River to be transferred to and stored in the aquifer. The recovery and use of this water will meet future demands for the City of Wichita. Certain sites have been identified as necessary for the capture of above base flow water, locations for water treatment facilities, recharge/recovery wells, and recharge basins. There were 92 parcels identified as being impacted by the project and acquisitions of easements was necessary. Ninety tracts have been acquired through negotiations since acquisitions started in 2009. Initiation of eminent domain to acquire the remaining two tracts was approved on March 8, 2011.

Analysis: The two remaining parcels are adjacent and have common ownership. After initial approval, it was determined that the legal descriptions needed to be modified. This modification requires that the ordinance be reread and republished. Once this is complete, the eminent domain action will proceed as previously approved. Staff will continue to negotiate with the owners. If an agreement is reached, the tracts will be deleted from the eminent domain action.

Financial Considerations: The cost of these acquisitions will be paid for with Water Utility revenues.

Goal Impact: The acquisition of these parcels is necessary to ensure Efficient Infrastructure.

Legal Considerations: The City is authorized by law to commence eminent domain proceedings to acquire these properties.

Recommendation/Action: Adopt and place on first reading the ordinance providing for the acquisition by eminent domain of certain real property; and directing the City Attorney to file the appropriate proceedings in the District court to accomplish such acquisition.

Attachments: Tract maps and condemnation ordinance.

PUBLISHED IN THE WICHITA EAGLE ON AUGUST 12, 2011 633669

ORDINANCE NO. 49-060

AN ORDINANCE PROVIDING FOR THE ACQUISITION BY EMINENT DOMAIN OF CERTAIN PRIVATE PROPERTY, EASEMENTS AND RIGHT-OF-WAY THEREIN, FOR THE PURPOSE OF ACQUIRING REAL PROPERTY FOR THE AQUIFER RECHARGE AND STORAGE PROJECT IN SEDGWICK COUNTY AND HARVEY COUNTY, KANSAS; DESIGNATING THE LANDS REQUIRED FOR SUCH PURPOSES AND DIRECTING THE CITY ATTORNEY TO FILE A PETITION IN THE DISTRICT COURT OF HARVEY COUNTY, KANSAS AND IN THE DISTRICT COURT OF SEDGWICK COUNTY, KANSAS, FOR ACQUISITION OF THE LANDS AND EASEMENTS THEREIN TAKEN AND PROVIDING FOR PAYMENT OF THE COST THEREOF.

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS:

SECTION 1. That it be and is hereby declared to be a public necessity to acquire by eminent domain proceedings for the purpose of public right-of-way for the development of infrastructure associated with the Aquifer Recharge and Storage project in Sedgwick County and Harvey County, Kansas, the lands and easements hereinafter described in Section 2.

SECTION 2. That the description of the lands and title therein necessary for the purpose of such action is as follows:

Clear and complete title (except for, and subject and subordinate to, existing Harvey County road right-of-way) for the uses and purposes herein set forth in and to the following-described tracts, to-wit:

The East 466.69 feet of the South 466.69 feet of the NE $\frac{1}{4}$, Section 35, T24S, R2W of the 6th P.M., Harvey County, Kansas. Said tract contains 5.00 acres, more or less, including existing road Right-of-Way.

And permanent easements for the purposes herein described in and to the following-described tracts, to-wit:

A permanent easement for the purpose of constructing, operating, maintaining, inspecting and repairing a pipeline for the transmission of water and associated uses over a strip of land described as:

An 85.5 foot strip permanent waterline easement over the East 165 feet of the Southwest Quarter of the Northeast Quarter and a portion of the Southeast Quarter of the Northeast Quarter of Section 35, Township 24 South, Range 2 West of the 6th P.M., Harvey County, Kansas described as:

Beginning at the Southeast corner of the Southwest Quarter of the Northeast Quarter of Section 35, Township 24 South, Range 2 West of the 6th P.M., Harvey County, Kansas; thence bearing S89°29'01"W, along the South line of said Southwest Quarter of the Northeast Quarter, a distance of 104.19 feet; thence bearing N42°55'57"W, a distance of 90.32 feet to the West line of the East 165 feet of the Southwest Quarter of the Northeast Quarter of said Section 35; thence bearing N00°36'57"W, along said West line, a distance of 127.00 feet; thence bearing S42°55'57"E, a distance of 262.35 feet to the South line of the Southeast Quarter of the Northeast Quarter of Section 35, Township 24 South, Range 2 West; thence bearing S89°29'01"W, a distance of 11.62 feet to the Point of Beginning. Said tract contains 0.346 acres, more or less.

A permanent easement for the purpose of constructing, operating, maintaining, inspecting and repairing a pipeline for the transmission of water and associated uses over a strip of land described as:

An 85.5 foot strip permanent waterline easement over the Southwest Quarter of the Northeast Quarter of Section 35, Township 24 South, Range 2 West of the 6th P.M., Harvey County, Kansas described as:

Commencing at the Northwest corner of the Southwest Quarter of the Northeast Quarter of Section 35, Township 24 South, Range 2 West of the 6th P.M., Harvey County, Kansas; thence bearing N89°33'17"E, along the North line of said Southwest Quarter of the Northeast Quarter, a distance of 9.97 feet to the Point of Beginning of a permanent waterline easement; thence bearing S42°55'57"E, a distance of 1704.04 feet to the West line of the East 165 feet of the Southwest Quarter of the Northeast Quarter of said Section 35; thence bearing N00°36'57"W, along the West line of said East 165 feet, a distance of 127.00 feet; thence bearing N42°55'57"W, a distance of 1531.82 feet to the North line of said Southwest Quarter of the Northeast Quarter of said Section 35; thence bearing S89°33'17"W, along said North line, a distance of 115.94 feet to the Point of Beginning. Said tract contains 3.176 acres, more or less.

And temporary construction easements for the purpose of constructing, maintaining, and repairing utilities, over, along and under the following described real estate situated in Harvey County, Kansas, to wit:

A 75.0 foot strip temporary construction easement over the Southwest Quarter of the Northeast Quarter and the Southeast Quarter of the Northwest Quarter of Section 35, Township 24 South, Range 2 West of the 6th P.M., Harvey County, Kansas described as:

Beginning at the Northwest corner of the Southwest Quarter of the Northeast Quarter of Section 35, Township 24 South, Range 2 West of the 6th P.M., Harvey County, Kansas; thence bearing N89°33'17"E, along the North line of said Southwest Quarter of the Northeast Quarter, a distance of 9.97 feet; thence bearing S42°55'57"E, a distance of 1704.04 feet to the West line of the East 165 feet of the Southwest Quarter of the Northeast Quarter of said Section 35; thence bearing S00°36'57"E, along the West line of said East 165 feet, a distance of 66.82 feet to the Southwest corner of said East 165 feet of the Southwest Quarter of the Northeast Quarter; thence bearing S89°29'01"W, along said South line of said Southwest Quarter of the Northeast Quarter, a distance of 40.78 feet; thence bearing N42°55'57"W, a distance of 1657.99 feet to

the West line of said Southwest Quarter of the Northeast Quarter of said Section 35; thence continuing along bearing N42°55'57"W, a distance of 136.64 feet to the North line of the Southeast Quarter of the Northwest Quarter of said Section 35; thence bearing N89°33'17"E, along the North line of said Southeast Quarter of the Northwest Quarter of said Section 35, a distance of 91.80 feet to the Point of Beginning. Said tract contains 3.043 acres, more or less.

A temporary construction easement over the East 165 feet of the Southwest Quarter of the Northeast Quarter of Section 35, Township 24 South, Range 2 West of the 6th P.M., Harvey County, Kansas described as:

Beginning at the Southwest corner of the East 165 feet of the Southwest Quarter of the Northeast Quarter of Section 35, Township 24 South, Range 2 West of the 6th P.M., Harvey County, Kansas; thence bearing N00°36'57"W, along the West line of said East 165 feet; a distance of 66.68 feet; thence bearing S42°55'57"E, a distance of 90.32 feet to the South line of said Southwest Quarter of the Northeast Quarter; thence bearing S89°29'01"W, a distance of 60.81 feet to the Point of Beginning. Said tract contains 0.046 acres, more or less.

SECTION 3. That the City Attorney is hereby authorized and directed to commence proceedings in eminent domain in the District Court of Sedgwick County, Kansas and the District Court of Harvey County, Kansas, for the appropriation of said lands and determination of the compensation to be awarded for the taking thereof.

SECTION 4. That the costs of said acquisition when ascertained shall be paid from General Obligation Bonds to be issued for the costs of such improvements; PROVIDED, however, should the City of Wichita acquire said property (and said City hereby reserves its right to abandon the condemnation as to any of all tracts) that General Funds are available for said purpose as provided by law.

SECTION 5. That the costs of said acquisition shall be charged to the City of Wichita.

SECTION 6. That this Ordinance shall take effect and be in force from and after its passage and publication once in the official City paper.

ADOPTED at Wichita, Kansas, this 9th day of August, 2011.

CITY OF WICHITA, KS:

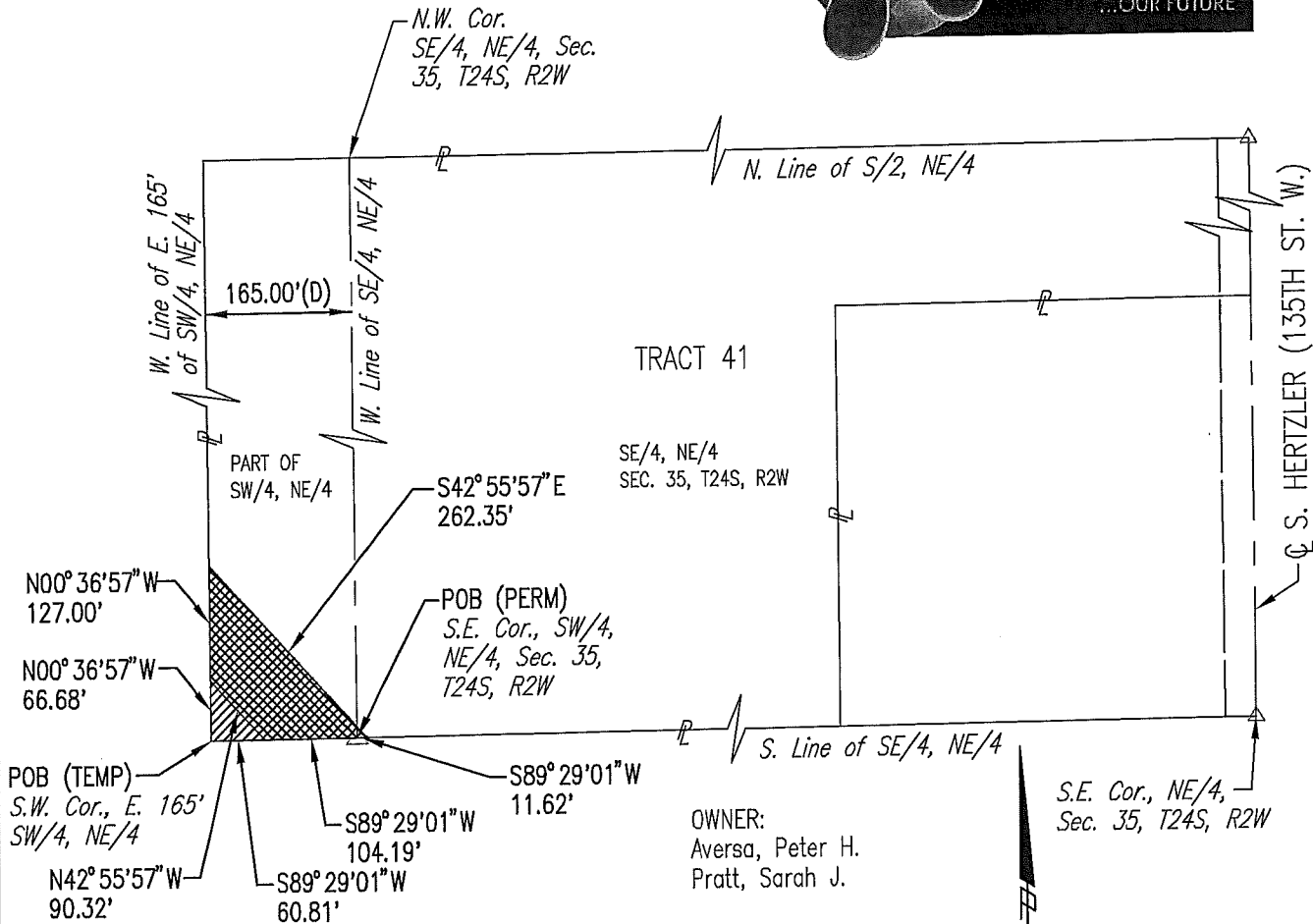
Carl Brewer, Mayor

ATTEST:

Karen Sublett, City Clerk

APPROVED AS TO FORM:

Gary E. Rebenstorf, Director of Law



An 85.5 foot strip permanent waterline easement over the East 165 feet of Southwest Quarter of the Northeast Quarter and a portion of Southeast Quarter of the Northeast Quarter of Section 35, Township 24 South, Range 2 West of the 6th P.M., Harvey County, Kansas described as:

Beginning at the Southeast corner of the Southwest Quarter of the Northeast Quarter of Section 35, Township 24 South, Range 2 West of the 6th P.M., Harvey County, Kansas; thence bearing S89°29'01"W, along the South line of said Southwest Quarter of the Northeast Quarter, a distance of 104.19 feet; thence bearing N42°55'57"W, a distance of 90.32 feet to the West line of the East 165 feet of the Southwest Quarter of the Northeast Quarter of said Section 35; thence bearing N00°36'57"W, along said West line, a distance of 127.00 feet; thence bearing S42°55'57"E, a distance of 262.35 feet to the South line of the Southeast Quarter of the Northeast Quarter of Section 35, Township 24 South, Range 2 West; thence bearing S89°29'01"W, a distance of 11.62 feet to the Point of Beginning.

Encompassing 0.346 acres more or less.

A temporary construction easement over the East 165 feet of the Southwest Quarter of the Northeast Quarter of Section 35, Township 24 South, Range 2 West of the 6th P.M., Harvey County, Kansas described as:

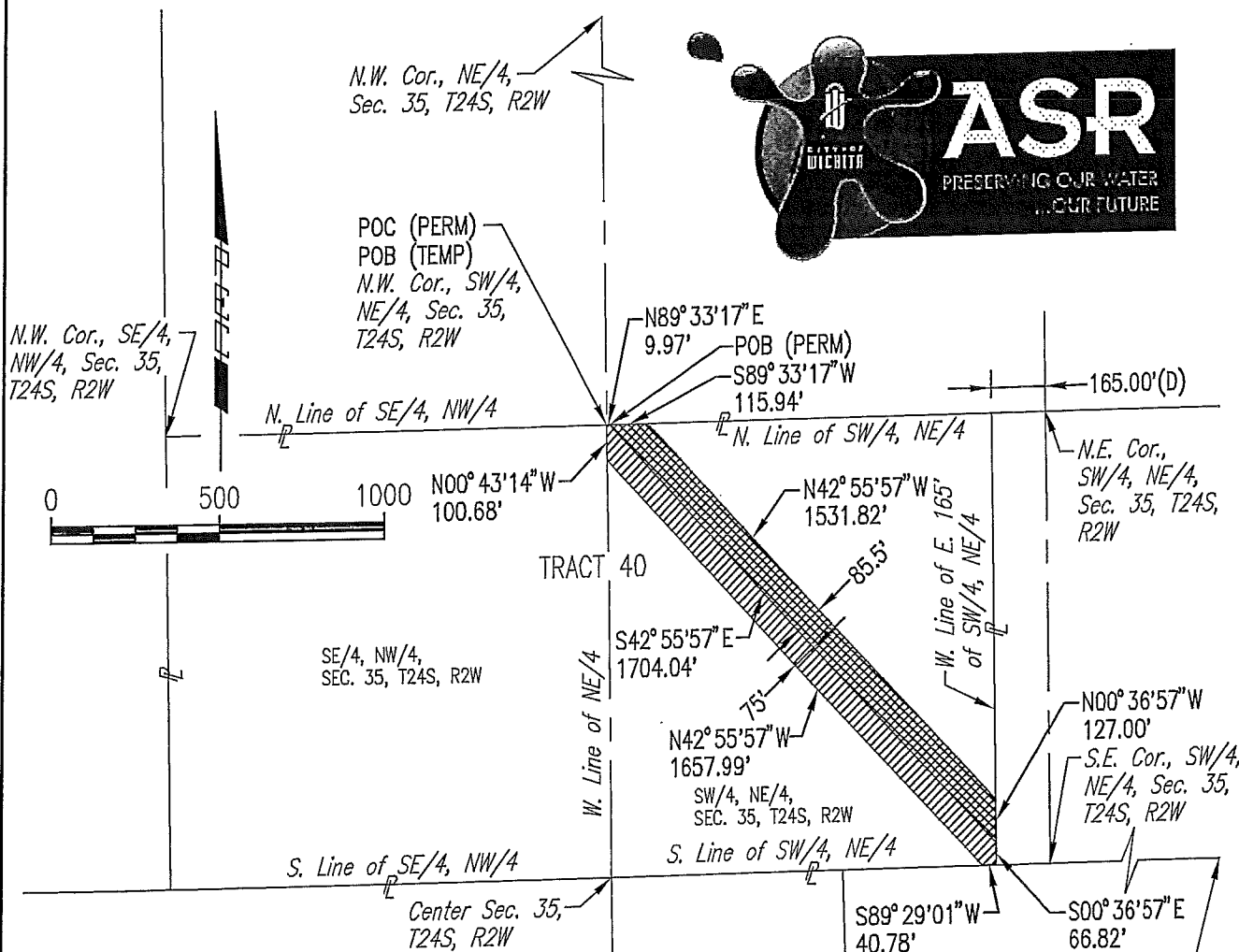
Beginning at the Southwest corner of the East 165 feet of the Southwest Quarter of the Northeast Quarter of Section 35, Township 24 South, Rang 2 West of the 6th P.M., Harvey County, Kansas; thence bearing N00°36'57"W, along the West line of said East 165 feet; a distance of 66.68 feet; thence bearing S42°55'57"E, a distance of 90.32 feet to the South line of said Southwest Quarter of the Northeast Quarter; thence bearing S89°29'01"W, a distance of 60.81 feet to the Point of Beginning.

Encompassing 0.046 acres more or less

Prepared by James R. (Russ) Beckett L.S. #832



PROFESSIONAL ENGINEERING CONSULTANTS, P.A.
303 SOUTH TOPEKA WICHITA, KS 67202
316-262-2691 www.pec1.com



LEGEND:

- D - Described
- POC - Point of Commencement
- POB - Point of Beginning
- Construction Easement
- Easement

OWNER:
Aversa, Peter H.
Pratt, Sarah J.

An 85.5 foot strip permanent waterline easement over the Southwest Quarter of the Northeast Quarter of Section 35, Township 24 South, Range 2 West of the 6th P.M., Harvey County, Kansas described as:

Commencing at the Northwest corner of the Southwest Quarter of the Northeast Quarter of Section 35, Township 24 South, Range 2 West of the 6th P.M., Harvey County, Kansas; thence bearing N89°33'17"E, along the North line of said Southwest Quarter of the Northeast Quarter, a distance of 9.97 feet to the Point of Beginning of a permanent waterline easement; thence bearing S42°55'57"E, a distance of 1704.04 feet to the West line of the East 165 feet of the Southwest Quarter of the Northeast Quarter of said Section 35; thence bearing N00°36'57"W, along the West line of said East 165 feet, a distance of 127.00 feet; thence bearing N42°55'57"W, a distance of 1531.82 feet to the North line of said Southwest Quarter of the Northeast Quarter of said Section 35; thence bearing S89°33'17"W, along said North line, a distance of 115.94 feet to the Point of Beginning.

Encompassing 3.176 acres more or less.

A 75.0 foot strip temporary construction easement over the Southwest Quarter of the Northeast Quarter of Section 35, Township 24 South, Range 2 West of the 6th P.M., Harvey County, Kansas described as:

Beginning at the Northwest corner of the Southwest Quarter of the Northeast Quarter of Section 35, Township 24 South, Range 2 West of the 6th P.M., Harvey County, Kansas; thence bearing N89°33'17"E, along the North line of said Southwest Quarter of the Northeast Quarter, a distance of 9.97 feet; thence bearing S42°55'57"E, a distance of 1704.04 feet to the West line of the East 165 feet of the Southwest Quarter of the Northeast Quarter of said Section 35; thence bearing N00°36'57"W, along the West line of said East 165 feet, a distance of 127.00 feet to the Southwest corner of said East 165 feet of the Southwest Quarter of the Northeast Quarter; thence bearing S89°33'17"W, along said South line of said Southwest Quarter of the Northeast Quarter of said Section 35, a distance of 40.78 feet; thence bearing N42°55'57"W, a distance of 1657.99 feet to the West line of said Southwest Quarter of the Northeast Quarter of said Section 35; thence bearing N00°43'14"W, along said West line, a distance of 100.68 feet to the Point of Beginning.

Encompassing 2.937 acres more or less.

Prepared by James R. (Russ) Beckett L.S. #832

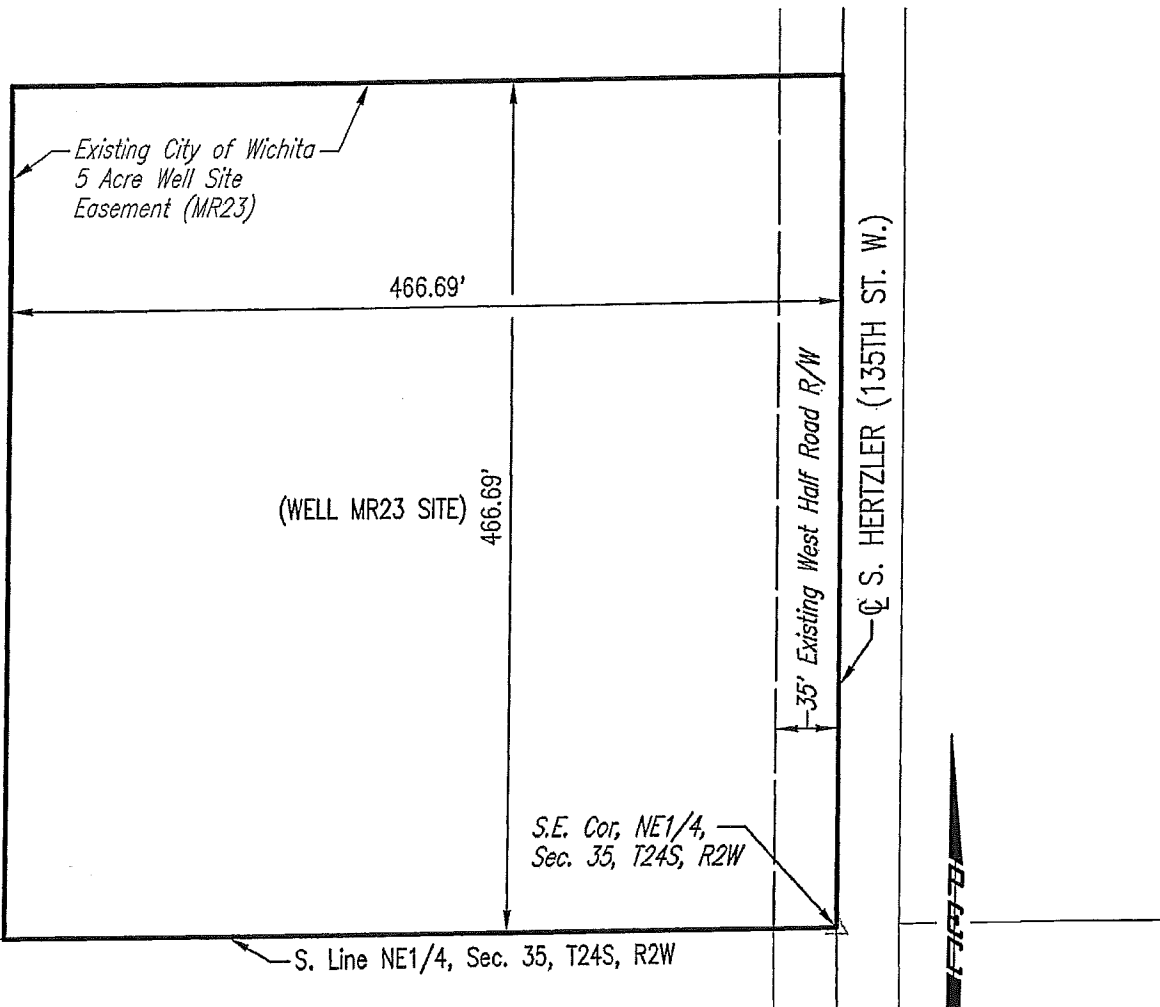


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NE 1/4
SECTION 35
T24S, R2W

TRACT 41



OWNER:
AVERSA, PETER H.
& PRATT, SARAH J.



TRACT 41 (WELL MR23)
THE EAST 466.69 FEET OF THE SOUTH 466.69 FEET OF THE NE1/4, SEC 35, T24S,
R2W OF THE SIXTH PRINCIPAL MERIDIAN, HARVEY COUNTY, KANSAS. SAID TRACT
CONTAINS 5.00 ACRES, MORE OR LESS, INCLUDING EXISTING ROAD RIGHT OF WAY.

City of Wichita
City Council Meeting
August 2, 2011

TO: Mayor and City Council

SUBJECT: Amended Ordinances and Resolution – Capital Improvement Program Projects
(All Districts)

INITIATED BY: Department of Public Works & Utilities

AGENDA: Consent

Recommendations: Place the amending ordinances on first reading and adopt the amending resolution.

Background: A legal review of the bonding ordinances and resolution for the City's issuance of general obligation bonds has been completed and has found a number of minor, technical errors that should be corrected. They consist of references to prior ordinances and project descriptions. Amending ordinances and a resolution have been prepared to correct the errors.

Analysis: The projects are: West Street, between Maple and Central; Tyler, between 21st and 29th; 17th, between Hillside and Grove; Pawnee/Broadway intersection improvement; and Intrust Bank Arena wayfinding signs

Financial Considerations: The approved project budgets are unaffected.

Goal Impact: These projects address the Efficient Infrastructure goal by improving arterial streets.

Legal Considerations: The amending ordinances and resolution have been approved as to form by the Law Department.

Recommendation/Actions: It is recommended that the City Council place the amending ordinances on first reading, adopt the amending resolution and authorize the necessary signatures.

Attachments: Amending ordinances and resolution.

Published in the Wichita Eagle on August 12th, 2011

ORDINANCE NO. 49-065

AN ORDINANCE AMENDING ORDINANCE NO. **48-104** OF THE CITY OF WICHITA, KANSAS DECLARING **WEST STREET, BETWEEN MAPLE AND CENTRAL AVENUE (472-84761)** TO BE A MAIN TRAFFICWAY WITHIN THE CITY OF WICHITA KANSAS; DECLARING THE NECESSITY OF AND AUTHORIZING CERTAIN IMPROVEMENTS TO SAID MAIN TRAFFICWAY; AND SETTING FORTH THE NATURE OF SAID IMPROVEMENTS, THE ESTIMATED COSTS THEREOF, AND THE MANNER OF PAYMENT OF THE SAME.

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS:

SECTION 1. SECTION 1 of Ordinance No. **48-104** is hereby amended to read as follows:

“SECTION 1. That **West Street, between Maple and Central Avenue (472-84761)** in the City of Wichita, Kansas is hereby designated and established as a main trafficway, the primary function of which is the movement of through traffic between areas of concentrated activity within the City, said designation made under the authority of K.S.A. 12-685.”

SECTION 2. SECTION 2 of Ordinance No. 48-104 is hereby amended to read as follows:

“SECTION 2. It is hereby deemed and declared to be necessary by the governing body of the City of Wichita, Kansas, to make improvements to **West Street, between Maple and Central Avenue (472-84761)** as a main trafficway in the following particulars:

The design, construction of a roadway, acquisition of right-of-way, relocation of utilities, installation of traffic signals, drainage improvements and landscaping, as necessary for a major traffic facility.”

SECTION 3. The original SECTIONS 1 and 2 of Ordinance No. **48-104** are hereby repealed.

SECTION 4. That the City Clerk shall make proper publication of this ordinance, which shall be published once in the official City paper and which shall be effective from and after said publication.

PASSED by the governing body of the City of Wichita, Kansas, this 9th day of August, 2011.

Carl Brewer, Mayor

ATTEST:

Karen Sublett, City Clerk

(SEAL)

APPROVED AS TO FORM:

Gary E. Rebenstorf, Director of Law

Published in the Wichita Eagle on August 12th, 2011

ORDINANCE NO. 49-064

AN ORDINANCE AMENDING ORDINANCE NO. **48-954** OF THE CITY OF WICHITA, KANSAS DECLARING **TYLER, BETWEEN 21ST STREET NORTH AND 29TH STREET NORTH (472-84921)** TO BE A MAIN TRAFFICWAY WITHIN THE CITY OF WICHITA KANSAS; DECLARING THE NECESSITY OF AND AUTHORIZING CERTAIN IMPROVEMENTS TO SAID MAIN TRAFFICWAY; AND SETTING FORTH THE NATURE OF SAID IMPROVEMENTS, THE ESTIMATED COSTS THEREOF, AND THE MANNER OF PAYMENT OF THE SAME.

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS:

SECTION 1. Section 1 of Ordinance No. **48-954** is hereby amended to read as follows:

“SECTION 1. SECTION 2 of Ordinance No. **48-816** is hereby amended to read as follows:

“SECTION 2. It is hereby deemed and declared to be necessary by the governing body of the City of Wichita, Kansas, to make improvements to **Tyler, between 21st Street North and 29th Street North (472-84921)** as a main trafficway in the following particulars:

The design, construction of a roadway, acquisition of right-of-way, relocation of utilities, installation of traffic signals, and landscaping, as necessary for a major traffic facility.”

SECTION 2. Section 2 of Ordinance No. **48-954** is hereby amended to read as follows:

“SECTION 2. SECTION 3 of Ordinance No. **48-816** is hereby amended to read as follows:

“SECTION 3. The cost of the construction of the above described improvements is estimated to be **Four Million Two Hundred Fifty-Eight Thousand Dollars (\$4,258,000)** exclusive of the cost of interest on borrowed money, with the total paid by the City of Wichita. Said City Cost, when ascertained, shall be borne by the City of Wichita at large by the issuance of General Obligation Bonds under the of K.S.A. 12-689”

SECTION 3. Section 3 of Ordinance No. **48-954** is hereby amended to read as follows:

“SECTION 3. The original SECTIONS 2 and 3 of Ordinance No. **48-816** are hereby repealed.”

SECTION 4. The original Sections 1, 2 and 3 of Ordinance No. **48-954** are hereby repealed.

SECTION 5. That the City Clerk shall make proper publication of this ordinance, which shall be published once in the official City paper and which shall be effective from and after said publication.

PASSED by the governing body of the City of Wichita, Kansas, this 9th day of August, 2011.

Carl Brewer, Mayor

ATTEST:

APPROVED AS TO FORM:

Karen Sublett, City Clerk

Gary E. Rebenstorf Director of Law

Published in the Wichita Eagle on August 12th, 2011

ORDINANCE NO. 49-062

AN ORDINANCE AMENDING ORDINANCE NO. **48-110** OF THE CITY OF WICHITA, KANSAS DECLARING **17TH ST. NORTH AND HILLSIDE; AND 17TH ST. NORTH, BETWEEN HILLSIDE AND GROVE (472-84766)** TO BE A MAIN TRAFFICWAY WITHIN THE CITY OF WICHITA KANSAS; DECLARING THE NECESSITY OF AND AUTHORIZING CERTAIN IMPROVEMENTS TO SAID MAIN TRAFFICWAY; AND SETTING FORTH THE NATURE OF SAID IMPROVEMENTS, THE ESTIMATED COSTS THEREOF, AND THE MANNER OF PAYMENT OF THE SAME.

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS:

SECTION 1. SECTION 1 of Ordinance No. **48-110** is hereby amended to read as follows:

“SECTION 1. That **17th St. North and Hillside; and 17th St. North, between Hillside and Grove (472-84766)** in the City of Wichita, Kansas is hereby designated and established as a main trafficway, the primary function of which is the movement of through traffic between areas of concentrated activity within the City, said designation made under the authority of K.S.A. 12-685.”

SECTION 2. SECTION 2 of Ordinance No. **48-110** is hereby amended to read as follows:

“SECTION 2. It is hereby deemed and declared to be necessary by the governing body of the City of Wichita, Kansas, to make improvements to **17th St. North and Hillside; and 17th St. North, between Hillside and Grove (472-84766)** as a main trafficway in the following particulars.

The design, construction of a roadway, acquisition of right-of-way, relocation of utilities, installation of traffic signals, drainage improvements and landscaping, as necessary for a major traffic facility.”

SECTION 3. The original SECTIONS 1 and 2 of Ordinance No. **48-110** are hereby repealed.

SECTION 4. That the City Clerk shall make proper publication of this ordinance, which shall be published once in the official City paper and which shall be effective from and after said publication.

PASSED by the governing body of the City of Wichita, Kansas, this 9th day of August, 2011.

Carl Brewer, Mayor

ATTEST:

Karen Sublett, City Clerk

(SEAL)

APPROVED AS TO FORM:

Gary E. Rebenstorf, Director of Law

Published in the Wichita Eagle on August 12th 2011

ORDINANCE NO. 49-063

AN ORDINANCE AMENDING ORDINANCE NO. **48-930** OF THE CITY OF WICHITA, KANSAS DECLARING **THE INTERSECTION OF PAWNEE AND BROADWAY (472-84881)** TO BE A MAIN TRAFFICWAY WITHIN THE CITY OF WICHITA KANSAS; DECLARING THE NECESSITY OF AND AUTHORIZING CERTAIN IMPROVEMENTS TO SAID MAIN TRAFFICWAY; AND SETTING FORTH THE NATURE OF SAID IMPROVEMENTS, THE ESTIMATED COSTS THEREOF, AND THE MANNER OF PAYMENT OF THE SAME.

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS:

SECTION 1. Section 1 of Ordinance No. **48-930** is hereby amended to read as follows:

“SECTION 1. SECTION 2 of Ordinance No. **48-694** is hereby amended to read as follows:

“SECTION 2. It is hereby deemed and declared to be necessary by the governing body of the City of Wichita, Kansas, to make improvements to **the intersection of Pawnee and Broadway (472-84881)** as a main trafficway in the following particulars:

The design, construction of a roadway, acquisition of right-of-way, relocation of utilities, installation of traffic signals, and landscaping, as necessary for a major traffic facility.”

SECTION 2. Section 2 of Ordinance No. **48-930** is hereby amended to read as follows:

“SECTION 2. SECTION 3 of Ordinance No. **48-694** is hereby amended to read as follows:

“SECTION 3. The cost of the construction of the above described improvements is estimated to be **Two Million One Hundred Twenty-Five Thousand Dollars (\$2,125,000)** exclusive of the cost of interest on borrowed money. To the extent the cost of such improvements is not paid by Federal Grants administered by the Kansas Department of Transportation, the City of Wichita, Kansas, is authorized to issue general obligation bonds to pay such costs under the authority of K.S.A. 12-689 up to a maximum amount of \$2,125,000, exclusive of the cost of interest on borrowed money.”

SECTION 3. Section 3 of Ordinance No. **48-930** is hereby amended to read as follows:

“SECTION 3. The original SECTIONS 2 and 3 of Ordinance No. **48-694** are hereby repealed.”

SECTION 4. The original Sections 1, 2 and 3 of Ordinance No. **48-930** are hereby repealed.

SECTION 5. That the City Clerk shall make proper publication of this ordinance, which shall be published once in the official City paper and which shall be effective from and after said publication.

PASSED by the governing body of the City of Wichita, Kansas, this 9th day of August, 2011.

Carl Brewer, Mayor

ATTEST:

Karen Sublett, City Clerk

(SEAL)

APPROVED AS TO FORM:

Gary E. Rebenstorf Director of Law

RESOLUTION NO. 11-189

A RESOLUTION OF THE CITY OF WICHITA, KANSAS, AMENDING OPERATIVE SECTION 3 OF RESOLUTION 09-063, REPEALING THE PRIOR VERSIONS OF SUCH SECTION AND REPEALING RESOLUTION 11-144.

WHEREAS, the City of Wichita, Kansas (the "City"), adopted Resolution No. 09-063 on March 3, 2009, authorizing the initiation of certain improvements to be financed with tax increment financing bonds; and

WHEREAS, Section 3 of Resolution No. 09-063 established the authority to issue bonds under K.S.A. 13-1024c; and

WHEREAS, bonds issued as full faith and credit tax increment financing bonds are actually authorized under K.S.A. 12-1770 et seq., including specifically K.S.A. 12-1774; and

WHEREAS, the City Council desires to modify Resolution No. 09-063 to include reference to K.S.A. 12-1770, et seq., including K.S.A. 12-1774, as part of the authority for the issuance of bonds to finance the improvements referenced in said Resolution, and to repeal Resolution No. 11-144, which was previously directed at amending Resolution 09-063.

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF WICHITA, KANSAS;

SECTION 1: Section 3 of Resolution No. 09-063 of the City of Wichita, is hereby amended to read as follows:

3. That the advisability of said improvements and the financing of the costs thereof with full faith and credit tax increment financing bonds is established as authorized by K.S.A. 12-1770 et seq., including specifically K.S.A. 12-1774, and by City of Wichita Charter Ordinance No. 156.

SECTION 2. The original Section 3 of Resolution No. 09-063 of the City of Wichita, Kansas, as the same existed to prior to effective date hereof, is hereby repealed.

SECTION 3. That Resolution No. 11-144 of the City of Wichita, Kansas, is hereby repealed.

SECTION 4. That this resolution shall take effect and be in force from and after its passage and publication once in the official city paper.

PASSED by the governing body of the City of Wichita, Kansas, this 2nd day of August, 2011.

CARL BREWER, MAYOR

ATTEST:

KAREN SUBLETT, CITY CLERK
(SEAL)

APPROVED AS TO FORM:

GARY E. REBENSTORF
DIRECTOR OF LAW

Second Reading Ordinances for August 2, 2011 (first read on July 26, 2011)

Abatement of Dangerous and Unsafe Structures. (Districts I, III, IV and VI)

ORDINANCE NO. 49-054

An ordinance making a special assessment to pay for the removal of certain structures, being dangerous and unsafe buildings which have been declared a nuisance (Building Condemnation-Demolition) under the provision of Sections 18.16.010 to 18.16.090 of the Code of the City of Wichita, Kansas

ORDINANCE NO. 49-055

An ordinance making a special assessment to pay for the removal of certain structures, being dangerous and unsafe buildings which have been declared a nuisance (Building Emergency Board-Up) under the provision of Sections 18.16.010 to 18.16.090 of the Code of the City of Wichita, Kansas

ZON2011-00018 associated with CUP2011-00017 – a zone change from SF-5 Single-family Residential to LC Limited Commercial, and Amendment #1 to DP-308 Mike Steven Motors Commercial Community Unit Plan on property generally located south of Kellogg Drive between Gouverneur Road and Calhoun Drive, on the northern terminus of Whittier Road, 542 South Whittier. (District II)

ORDINANCE NO. 49-056

An ordinance changing the zoning classifications or districts of certain lands located in the city of Wichita, Kansas, under the authority granted by the Wichita-Sedgwick County Unified Zoning Code, Section V-C, as adopted by Section 28.04.010, as amended.

ZON2011-00019 – City zone change from SF-5 Single-Family Residential to LC Limited Commercial; generally located northwest of the intersection of South Hillside Avenue and East Ross Parkway, 2825 South Hillside Ave. (District III)

ORDINANCE NO. 49-057

An ordinance changing the zoning classifications or districts of certain lands located in the city of Wichita, Kansas, under the authority granted by the Wichita-Sedgwick County Unified Zoning Code, Section V-C, as adopted by Section 28.04.010, as amended.

City of Wichita
City Council Meeting
August 2, 2011

TO: Mayor and City Council

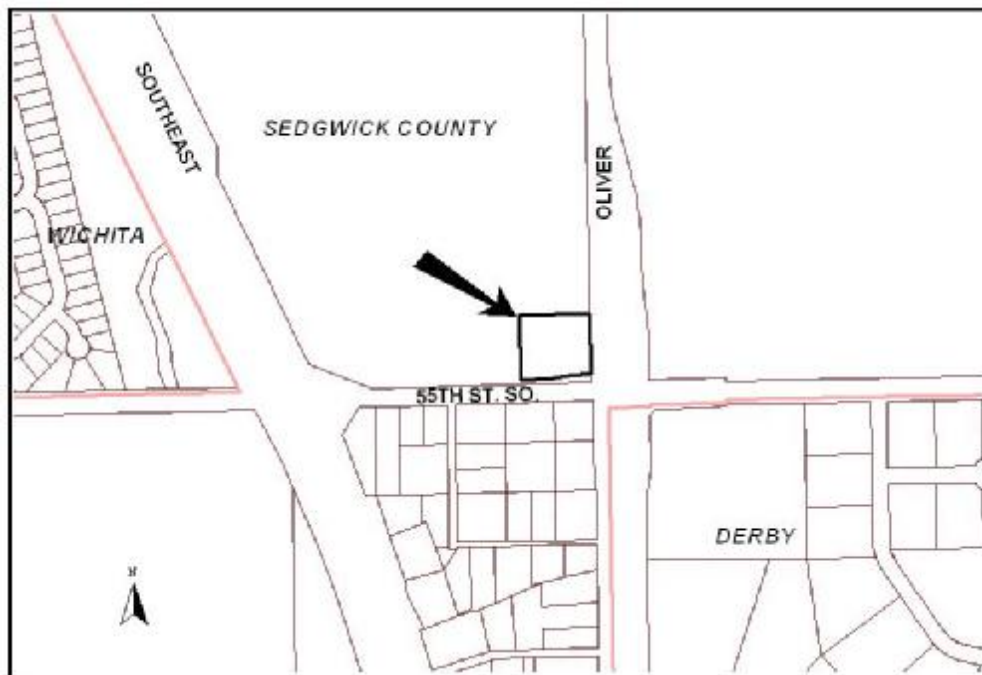
SUBJECT: SUB2011-00024 -- Plat of RWD No. 3 Booster Pump Station Addition located at the northwest corner of 55th Street South and Oliver. (County)

INITIATED BY: Metropolitan Area Planning Department

AGENDA: Planning (Consent)

Staff Recommendation: Approve the plat.

MAPC Recommendation: Approve the plat. (10-0)



Background: The site, consisting of one lot on two acres, is located in the County within three miles of the City of Wichita and is zoned IP-A Industrial Park – Airport. A Conditional Use (CON 2011-00014) has been approved for a major utility to permit Rural Water District (RWD) No. 3 to install a booster pump station.

Analysis: The site has been approved by County Code Enforcement for the use of on-site sanitary sewer and water facilities. The applicant has submitted a No Protest Agreement for Future Water and Sewer Extension. The site is within the noise impact area of McConnell Air Force Base; therefore the applicant has submitted an Avigational Easement and Restrictive Covenant to assure that adequate construction methods will be used to minimize the effects of noise pollution.

The plat has been reviewed and approved by the Metropolitan Area Planning Commission subject to conditions.

Financial Considerations: There are no financial considerations associated with the plat.

Goal Impact: Approval of the plat will ensure Efficient Infrastructure through the integration of streets, utilities and other public facilities.

Legal Considerations: The No Protest Agreement for Future Water and Sewer Extension, Avigational Easement and Restrictive Covenant have been approved as to form by the Law Department and will be recorded by the Register of Deeds.

Recommendations/Actions: It is recommended that the City Council approve the documents and plat and authorize the necessary signatures.

Attachments: No Protest Agreement for Future Water and Sewer Extension
Avigational Easement
Restrictive Covenant

NO PROTEST AGREEMENT FOR FUTURE WATER AND SEWER EXTENSION

This Agreement made and entered into this 7th day of July, 2011, by and between the City of Wichita, Kansas, party of the first part (hereinafter "City") and Sedgwick County Rural Water District No. 3, party of the second part (hereinafter "Owner").

WITNESSETH:

Whereas, City, at some undetermined time in the future, intends to construct certain public improvement to serve property owned by Owner and property owned by others; and

WHEREAS, the Owner is the Owner of real property legally described as:

Lot 1, Block 1, RWD No. 3 Booster Pump Station Addition
and

WHEREAS, the City wishes to insure that the said real property owned by the Owner will be included in the improvement district responsible for that portion of the costs of said future improvement that are to be assessed pursuant to the provision of K.S.A. 12-6a01 et seq.

NOW THEREFORE, the parties hereto agree as follows:

1. City shall grant Owner's request for subject plat to said real property, without making necessary the submittal of petitions for sanitary sewer and water line petitions to serve said property.
2. Owner, on his/her own behalf and on behalf of his/her heirs, assigns and successors in interest, irrevocable waives his/her right, pursuant to K.S.A. 12-6a01, to protest the commencement of the construction a sanitary sewer extension undertaken by the City, but nothing contained herein shall be deemed to be a waiver by Owner of his/her right to challenge, pursuant to K.S.A. 126a11 the reasonableness of the portion of the cost of said construction assessed against Owner's said real property.

A copy of this Agreement shall be recorded with the Register of Deeds and the promises herein made by Owner(s) shall constitute covenants running with the land described herein.

SEDGWICK COUNTY
RURAL WATER DISTRICT NO. 3

CITY OF WICHITA

By: 
Mark Hardison, Chairman

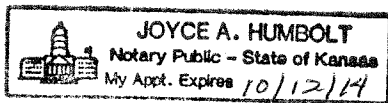
By: _____
Carl Brewer, Mayor

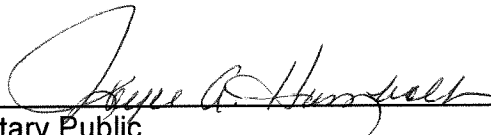
ATTEST:

Karen Sublett, City Clerk

STATE OF KANSAS)
)SS:
COUNTY OF SEDGWICK)

BE IT REMEMBERED that on this 7th day of July, 2011, before me, a Notary of Public in and for the County and State aforesaid, came Mark Hardison, Chairman of Sedgwick County Rural Water District No. 3, personally known to me to be the same person(s) who executed the within instrument of writing and such person(s) duly acknowledged to me the execution of the same.




Notary Public

My Commission Expires: October 12, 2014

STATE OF KANSAS)
)SS:
COUNTY OF SEDGWICK)

BE IT REMEMBERED that on this _____ day of _____, 2011, before me, a Notary of Public in and for the County and State aforesaid, came Carl Brewer as Mayor the City of Wichita, A Municipal Corporation, personally known to me to be the same person(s) who executed the within instrument of writing and such person(s) duly acknowledged to me the execution of the same.

Notary Public

My Commission Expires: _____

APPROVED AS TO FORM:

Gary E. Rebenstorf, Director of Law

AVIGATIONAL EASEMENT

KNOW ALL MEN BY THESE PRESENTS:

That for a good and valuable consideration, the receipt of which is hereby acknowledged, Sedgwick County Rural Water District No. 3 (RWD No. 3), (grantors), do hereby grant a permanent Avigational Easement to the public authority authorized by law to own and operate public-owned airports in Sedgwick County, Kansas, for the use of "Navigable Airspace" as defined by the Federal Aviation Act of 1958, over all of the following described real estate, to-wit:

Lot 1, Block 1; RWD No. 3 Addition to Sedgwick County, Kansas.

By virtue of this easement, the grantors, for and on behalf of themselves and their respective successors in interest to any and all of the real property above described, waive as to the public authority only any and all claims for damage of any kind whatsoever incurred as a result of aircraft using the "Navigable Airspace" granted herein. This easement does not grant or convey any surface use rights, nor is it to be construed to grant any right to private persons or corporations.

"Navigable Airspace" means air space above the minimum altitudes of flight prescribed by regulations issued under the Federal Aviation Act of 1958, Section 101 (24) 49 U.S. Code 1301, and shall include air space needed to insure safety in takeoff and landing of aircraft.

To have and to hold said easement forever.

IN WITNESS WHEREOF: The grantors have signed these presents this 25th day of July, 2011.

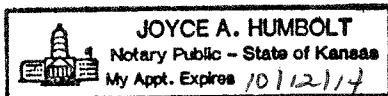
SEDGWICK COUNTY RURAL WATER DISTRICT NO. 3

By: 
Mark Hardison, Chairman

STATE OF KANSAS)
) SS
SEDGWICK COUNTY)

Personally appeared before me a notary public in and for the County and State aforesaid Mark Hardison, Chairman of Sedgwick County Rural Water District No. 3, to me personally known to be the same person(s) who executed the foregoing instrument of writing and said person(s) duly acknowledged the execution thereof.

Dated this 7th day of July, 2011.



Joyce A. Humbolt
Notary Public

My Appointment Expires: October 12, 2014

APPROVED AS TO FORM:

Gary E. Rebenstorf, Director of Law

RESTRICTIVE COVENANT

This covenant, executed this 27th day of July, 2011.

WITNESSETH: That,

WHEREAS, the undersigned is in the process of platting certain real property to be known as RWD No. 3 Booster Pump Station Addition to Sedgwick County, Kansas; and

WHEREAS, Grantors are the owners of Lot 1, Block 1; an addition to Sedgwick County, Kansas, which property is located near McConnell Air Force Base and is accordingly subject to considerable noise from the operation of aircraft, and is exposed at times to aircraft noise which may infringe upon a resident's enjoyment of property and may, depending upon the degree of acoustical treatment of the dwelling, affect his health and/or wellbeing, and

WHEREAS, the County of Sedgwick in connection with approval of the plat of said addition considers it to be in the public interest to require any buildings constructed on said addition to be designed and constructed giving proper consideration to noise pollution in the area;

NOW, THEREFORE, the undersigned does hereby subject RWD No. 3. Booster Pump Station Addition to Sedgwick County, Kansas, to the following covenants and restrictions:

1. Any building constructed on the premises shall be so designed and constructed as to minimize noise pollution in any such structure, giving due consideration to the use for which such structure is designed and built. This covenant is for the benefit of said property and shall run with the land and shall inure to the benefit of and pass with said property and shall apply to and bind the successors in interest and any owner thereof.

2. This covenant is binding on the owners, its successors and assigns and is a covenant running with the land and is binding on all successors in title to the above described property.

3. The covenants, conditions, restrictions on the property created and established in this instrument may be waived, terminated, or modified only upon written consent to the County of Sedgwick. No such waiver, termination or modification shall be effective until such written consent is recorded in the office of the Register of Deeds for Sedgwick County, Kansas.

EXECUTED the day and year first above written.

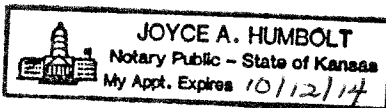
SEDGWICK COUNTY RURAL WATER DISTRICT NO. 3

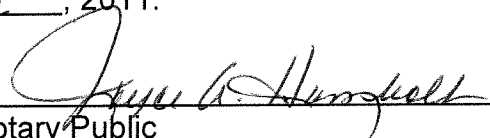
By: 
Mark Hardison, Chairman

STATE OF KANSAS)
) SS
SEDGWICK COUNTY)

Personally appeared before me a notary public in and for the County and State aforesaid Mark Hardison, Chairman of Sedgwick County Rural Water District No. 3, to me personally known to be the same person(s) who executed the foregoing instrument of writing and said person(s) duly acknowledged the execution thereof.

Dated this 7th day of July, 2011.




Notary Public

My Appointment Expires: October 12, 2014

APPROVED AS TO FORM:

Gary E. Rebenstorf, Director of Law

City of Wichita
City Council Meeting
August 2, 2011

TO: Mayor and City Council

SUBJECT: DED2011-00004 – Dedication of Alley Right-of-Way located south of Maple and east of West Street. (District IV)

INITIATED BY: Metropolitan Area Planning Department

AGENDA: Planning (Consent)

Staff Recommendation: Approve the Dedication.



Background: The Dedication is associated with Lot Split Case No. SUB2011-00030 (Quincy Addition) and was requested by Traffic Engineering.

Analysis: The Dedication is for five feet of additional right-of-way for an adjacent alley.

Financial Considerations: There are no financial considerations associated with the Dedication.

Goal Impact: Approval of the Dedication will ensure Efficient Infrastructure through the integration of streets, utilities and other public facilities.

Legal Considerations: The Dedication has been approved as to form by the Law Department and will be recorded with the Register of Deeds.

Recommendations/Actions: It is recommended that the City Council accept the Dedication.

Attachments: Dedication

COPY

DEDICATION

KNOW ALL MEN BY THESE PRESENTS:

That for and in consideration of good and valuable considerations, the receipt of which is hereby acknowledged, the undersigned, Bob Armstrong, Managing Member of BATC, LLC, owner of the following described real estate in Sedgwick County, Kansas, to wit:

The east 5.00 feet of Lots 2, 4, 6, 8, 10 and 12, Block 8, Quincy Addition to Wichita (Sedgwick County), Kansas,

do hereby dedicate the above described real estate to the public for alley purposes.

EXECUTED this 30th day of June, 2011.

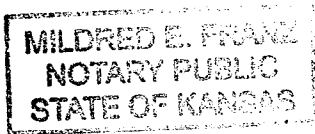
BATC, LLC

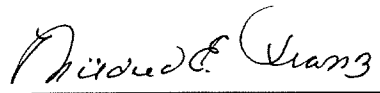

Bob Armstrong

Managing Member

STATE OF KANSAS)
) SS
SEDGWICK COUNTY)

The foregoing instrument acknowledged before me this 30th day of June, 2011, by Bob Armstrong, Managing Member, on behalf of BATC, LLC.




Mildred E. Franz, Notary Public

My appointment expires 02/13/2015

APPROVED AS TO FORM:

Gary E. Rebenstorf, Director of Law

City of Wichita
City Council Meeting
August 2, 2011

TO: Wichita Airport Authority

SUBJECT: Airfield Electrical System Replacement
Wichita Mid-Continent Airport

INITIATED BY: Department of Airports

AGENDA: Wichita Airport Authority (Consent)

Recommendation: Initiate the project, approve the budget and contract, and approve the application for and acceptance of Federal Aviation Administration (FAA) grant funds.

Background: Portions of the airfield electrical system are in need of replacement at Mid-Continent Airport. This project will replace cabling, edge lights, electrical equipment, and guidance signage and reconstruct damaged electrical manholes.

Analysis: A Request for Qualifications was issued to solicit professional services. Four consulting firms were interviewed and Professional Engineering Consultants (PEC) was selected by the Staff Screening and Selection Committee due to its previous and applicable experience with similar projects, plus having a better understanding of this project and this site.

Financial Considerations: The contract amount for design and bid phase services is \$91,406. The project budget requested is \$2,000,000. Ninety-five percent of the project will be paid for with funds from the FAA (grant application attached). The remaining five percent will be funded with Airport revenues either directly or through the repayment of General Obligation bonds. The adopted 2009-2018 CIP shows airfield paving projects in 2013, which are being delayed several years for federal funding considerations. Staff is requesting that those funds be reallocated to this project to take advantage of immediately available grant funding for this critical airfield project.

Goal Impact: The Airport's contribution to the Economic Vitality of Wichita is promoted through the maintenance of a safe airfield to serve the aviation community.

Legal Considerations: The Law Department has approved the Contract as to form.

Recommendations/Actions: It is recommended that the Wichita Airport Authority (WAA) initiate the project, approve the budget and the contract, and authorize necessary signatures. It is also recommended that the WAA approve the grant application and acceptance of grant funds and authorize the Director of Airports to sign all necessary documents related to the grant.

Attachments: Contract and Grant Application.

CONTRACT
for
CONSULTING SERVICES
Between the
WICHITA AIRPORT AUTHORITY

and

PROFESSIONAL ENGINEERING CONSULTANTS

THIS CONTRACT, made this _____ day of _____, 2011, by and between the WICHITA AIRPORT AUTHORITY, Wichita, Kansas, party of the first part, hereinafter called the "OWNER" and Professional Engineering Consultants, 303 S. Topeka, Wichita, Kansas; party of the second part, hereinafter called the "CONSULTANT".

WITNESSETH: That,

WHEREAS the OWNER is engaged in the operation of Mid-Continent Airport; and whereas it is the desire of both parties that the CONSULTANT furnish consulting services in conjunction with the Airfield Electrical System Replacement (PROJECT); and whereas all of the aforesaid being located within the corporate limits of the City of Wichita, Sedgwick County, Kansas, and

WHEREAS, the OWNER is authorized by law to employ a consultant to provide professional consulting services NOW, THEREFORE, the parties hereto do mutually agree as follows:

ARTICLE I - SCOPE OF SERVICES

The Scope of Services to be performed by the CONSULTANT shall be as outlined in EXHIBIT A, attached hereto and incorporated herein by reference.

ARTICLE II - THE CONSULTANT AGREES:

- A. To provide the professional services, equipment, material and transportation to perform the tasks as outlined in ARTICLE I, SCOPE OF SERVICES.
- B. To designate a project manager who will coordinate all work and be the point of contact for communications and to submit qualifications of the proposed project manager to the OWNER in advance of the Notice to Proceed. The OWNER reserves the right to withhold the Notice to Proceed until a qualified project manager is designated. The OWNER shall concur with any changes to this assignment.
- C. That this Agreement and all subconsultant agreements shall be governed by the laws of the State of Kansas.
- D. To submit to the OWNER in a timely manner, editable, electronic files of all surveys and drawings in AutoCAD format and specifications in Microsoft Word. Each submittal shall be in a single, organized file that mimics the plans and specifications.
- E. To save and hold OWNER harmless against all suits, claims, damages and losses for injuries to third parties or their property or to the OWNER and its property arising from

or caused by negligent acts, errors or omissions of CONSULTANT, its agents, servants, employees, or subconsultants occurring in the performance of its services under this Agreement. This liability shall extend to consequential damages suffered by OWNER as a result of loss of revenue, loss of grant or other funding mechanisms, regulatory penalties, changes in construction requirements, or changes in regulatory compliance requirements.

- F. To maintain an acceptable cost accounting system in accordance with 49 CFR Part 18.36. The CONSULTANT agrees to provide the Sponsor, the Federal Aviation Administration and the Comptroller General of the United States or any of their duly authorized representatives access to any books, documents, papers, and records of the CONSULTANT which are directly pertinent to the specific Contract for the purpose of making audit, examination, excerpts and transcriptions. The CONSULTANT agrees to maintain all books, records and reports required under this Contract for a period of not less than three years after final payment is made and all pending matters are closed.
- G. That the CONSULTANT shall not, participate either directly or indirectly in discrimination prohibited by the non-discrimination requirements of the City of Wichita, Kansas, as set out in EXHIBIT B, and the non-discrimination requirements of the Federal Aviation Administration, as set out in EXHIBIT C, all of which are attached hereto and incorporated herein by reference.

That the CONSULTANT assures that it will undertake an affirmative action program as required by 14 CFR Part 152, Subpart E, to insure that no person shall on the grounds of race, creed, color, national origin or sex be excluded from participating in any employment activities covered in 14 CFR Part 152, Subpart E. The CONSULTANT assures that no person shall be excluded on these grounds from participating in or receiving the services or benefits of any program or activity covered by this subpart. The CONSULTANT assures that it will require that their covered suborganizations provide assurances to the OWNER that they similarly will undertake affirmative action programs and that they will require assurances from their suborganizations, as required by 14 CFR Part 152, Subpart E, to the same effect.

- H. To accept compensation for the work herein described in such amounts and at such periods as hereinafter provided and that such compensation shall be satisfactory and sufficient payment for all work performed, equipment or materials used and services rendered in connection with such work described in EXHIBIT A.
- I. To submit billings to the OWNER for the Services performed as required by this Agreement. Billings shall not exceed progress of work as evidenced by deliverables submitted by the CONSULTANT and approved by the OWNER. During the progress of work covered by the Agreement, partial payment requests may be made at intervals of not less than four weeks. The progress billings shall be supported by documentation acceptable to the OWNER, which shall include a record of the percentage completion evidenced by approved deliverables, of the number of days allocated for completion of the work, the number of days that have elapsed, and the number of days that remain to complete the work. Progress billings shall also include copies of subconsultant invoices to the CONSULTANT for the same billing period. Payment to subconsultants, for satisfactory performance, shall be made within 30 days of receipt of payment and no retainage shall be withheld. Any delay or postponement of payment from the

referenced time frame may occur only for good cause and following written approval of the OWNER.

- J. To complete and deliver plans to the OWNER within the time allotted for the work as stipulated herein; except that the CONSULTANT shall not be responsible or held liable for the time required for reviews for the approving parties or other delays occasioned by the actions or inactions of the OWNER or other agencies, or for other unavoidable delays beyond the control of the CONSULTANT. The schedule is outlined in EXHIBIT D, attached hereto and incorporated herein by reference. The CONSULTANT shall maintain such schedule through the duration of the Project.
- K. To covenant and represent to be responsible for the professional and technical accuracy and the coordination of all drawings or other work or material furnished by the CONSULTANT under this Agreement.

CONSULTANT further agrees, covenants and represents that services furnished by CONSULTANT, its agents, employees and subconsultants under this Agreement shall be free from negligent errors or omissions.

CONSULTANT further agrees, covenants and represents, that all specifications and bid documents prepared in accordance with the work required by this Agreement shall contain a clause that provides the following:

"Notwithstanding anything to the contrary contained in these bid documents or the contract to be awarded herein, the OWNER shall not be subject to arbitration and any clause relating to arbitration contained in these bid documents or in the contract to be awarded herein shall be null and void."

- L. To procure and maintain such professional liability insurance as will protect the CONSULTANT from damages resulting from negligent acts and/or omissions of the CONSULTANT, its agents, officers, employees and subconsultants in an amount not less than \$3,000,000 per claim, with tail coverage extending for 3 years after project completion, subject to deductible of the greater of \$10,000 or such amount that the CONSULTANT can demonstrate to OWNER'S satisfaction is financially prudent. The CONSULTANT shall be responsible for payment of all deductible amounts without reimbursement by OWNER. In addition, a Worker's Compensation policy with coverage amounts sufficient to meet statutory requirements shall be provided and maintained. This policy shall contain an "all-states" endorsement. In addition, an Employers Liability policy with coverage in the sum of not less than \$1,000,000 shall be provided and maintained. This policy shall also cover claims for injury, disease or death of employees arising out of and in the course of their employment, which, for any reason, may not fall within the provisions of the Worker's Compensation Law.

Further, a comprehensive general liability policy shall be procured and maintained by the CONSULTANT for the duration of the Project that shall be written in a comprehensive form and shall protect CONSULTANT against all claims arising from injuries to persons (other than CONSULTANT'S employees) or damage to property of the OWNER or others arising out of any negligent act or omission of CONSULTANT, its agents, officers, employees, or subconsultants in the performance of CONSULTANT services under this Agreement. The liability limit shall not be less than

\$1,000,000 per occurrence for bodily injury, death and property damage. The Wichita Airport Authority, Wichita, Kansas; the City of Wichita; their officers, employees and agents shall be named as additional insureds under the terms of the policy with respect to the names insurer's operations. Satisfactory Certificates of Insurance shall be filed with the OWNER prior to the time CONSULTANT starts any work under this Agreement. The CONSULTANT shall maintain such insurance through the duration of the Project. In addition, insurance policies applicable hereto shall contain a provision that provides that the OWNER shall be given thirty (30) days written notice by the insurance company before such policy is substantially changed or cancelled.

- M. To employ Disadvantaged Business Enterprise (DBE) concerns to the extent possible of approximately 6.22 percent of the eligible federally funded services encumbered by this Agreement and related Supplemental Agreements.
 - 1. Contract Assurance - The Consultant or subconsultant shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Contract. The Consultant shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT assisted contracts. Failure by the Consultant to carry out these requirements is a material breach of this Contract, which may result in the termination of this Contract or such other remedy, as the recipient deems appropriate.
 - 2. Prompt Payment - The prime Consultant agrees to pay each subconsultant under this prime Contract for satisfactory performance of its contract no later than five days from receipt of each payment the prime Consultant receives from the Wichita Airport Authority. The prime Consultant agrees further to return retainage payments to each subconsultant within thirty days after the subconsultant's work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of the Wichita Airport Authority. This clause applies to both DBE and non-DBE subconsultants.
- N. Its agents, employees and subconsultants, shall be subject to any and all applicable rules, regulations, orders and restrictions which are now in effect and which apply to its activities on airport property, including such rules, regulations, orders and/or restrictions that may be adopted, enacted or amended during the term of this Agreement.
- O. The CONSULTANT and the OWNER shall not be obligated to resolve any claim or dispute related to this Agreement by arbitration. Any reference to arbitration in any proposal or contract documents is deemed void.
- P. That all information provided by the OWNER and/or developed for the PROJECT shall be considered confidential and proprietary, and shall not be reproduced, transmitted, used or disclosed by the CONSULTANT without the written consent of OWNER, except as may be necessary for the non-disclosing party to fulfill its obligations hereunder; provided, however, that the limitation shall not apply to any information or portion thereof, which is:
 - 1. Within the public domain at the time of its disclosure.

2. Required to be disclosed by a court of competent jurisdiction or Government order.
 3. Approved by the OWNER for publicity.
 4. Required to be communicated in connection with filings with governmental bodies having jurisdiction over the design or construction of the PROJECT.
- Q. That unless the OWNER has authorized in writing an increase in funds established for the construction estimates of cost, the CONSULTANT agrees to make any such revisions in plans and specifications as are necessary and as are satisfactory to the OWNER, to bring the PROJECT within the approved estimated cost, such revisions to be made at its own expense without cost to the OWNER, whether or not said plans and specifications have theretofore been approved by the OWNER; provided, that if said plans and specifications have been approved by the OWNER, should the OWNER desire any material changes in the type of construction or other changes not necessary to be made for the purpose of bringing the cost of the PROJECT within the estimate, the OWNER shall pay the CONSULTANT the cost of making such revisions.
- R. Any violation or breach of terms of this Agreement on the part of the CONSULTANT or their subconsultants may result in the suspension or termination of this Agreement or such other action that may be necessary to enforce the rights of the parties of this Agreement in accordance with 49 CFR Part 18.36. The duties and obligations imposed by the Contract Documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law.
- S. All rights to inventions and materials generated under this Agreement are subject to regulations issues by the FAA and the OWNER of the Federal grant under which this Agreement is executed in accordance with 49 CFR Part 18.36.

ARTICLE III - THE OWNER AGREES:

- A. To furnish all available data pertaining to the PROJECT available to the OWNER. All data shall be considered confidential unless otherwise noted.
- B. To pay the CONSULTANT for services in accordance with the requirements of this Agreement within thirty (30) working days from the date of receipt of invoice and upon satisfactory performance of service.
- C. To provide the right of entry into secured areas for CONSULTANT'S personnel, subject to all rules and regulations of the OWNER, the Transportation Security Administration and Federal Aviation Administration regarding airfield safety and security.
- D. To pay all applicable design phase fees, unless otherwise stated herein.

ARTICLE IV – PAYMENT PROVISIONS:

- A. Payment to the CONSULTANT for performance of the specified services shall be on the basis of a lump sum fee of \$83,719.00 for design phase services and \$7,687.00 for bid phase services for a total lump sum fee for this Agreement of \$91,406.00 as

allowed in Chapter 4, Federal Aviation Administration Advisory Circular 150/5100-14D dated September 30 2005, unless otherwise noted herein. The fee summaries are provided in EXHIBITS E and E1.

- B. During the course of the Agreement any scope changes anticipated or detected by the CONSULTANT shall immediately, and in writing, be brought to the attention of the OWNER along with an estimate of actual costs and impact to the schedule. The CONSULTANT shall give the OWNER the opportunity to mitigate any and/or all impacts of the proposed scope changes. For potential scope changes initiated by the OWNER, the OWNER shall provide to the CONSULTANT, in writing, the known details of the proposed scope change and the CONSULTANT shall proceed to provide a timely response. In no case shall additional work be performed nor shall additional compensation be paid except on the basis of an executed supplemental agreement.
- C. Final payment shall not occur until all work is complete and approved by the OWNER.

ARTICLE V - THE PARTIES HERETO MUTUALLY AGREE:

A. TERMINATION OF CONTRACT (49 CFR Part 18.36)

The OWNER may, by written notice, terminate this Agreement in whole or in part at any time, either for the OWNER'S convenience or because of failure to fulfill the Agreement obligations. Upon receipt of such notice services shall be immediately discontinued (unless the notice directs otherwise) and all materials as may have been accumulated in performing this Agreement, whether completed or in progress, delivered to the OWNER.

If the termination is for the convenience of the OWNER, an equitable adjustment in the contract price shall be made, but no amount shall be allowed for anticipated profit on unperformed services.

If the termination is due to failure to fulfill the CONSULTANT'S obligations, the OWNER may take over the work and prosecute the same to completion by contract or otherwise. In such case, the CONSULTANT shall be liable to the OWNER for any additional cost occasioned to the OWNER thereby.

If, after notice of termination for failure to fulfill contract obligations, it is determined that the CONSULTANT had not so failed, the termination shall be deemed to have been effected for the convenience of the OWNER. In such event, adjustment in the contract price shall be made as provided herein.

The rights and remedies of the OWNER provided in this clause are in addition to any other rights and remedies provided by law or under this Agreement.

- B. That deliverables shall become the property of the OWNER upon delivery or termination of the Services in accordance with this Agreement. The OWNER shall not hold the CONSULTANT liable upon the OWNER'S reuse of any part of deliverables, and there shall be no restriction or limitation on their further use by the OWNER. Consultant's seal and name shall not be reproduced on such documents if reused by the OWNER.

- C. That the Services to be performed by the CONSULTANT under the terms of this Agreement are personal and cannot be assigned sublet or transferred without specific consent of the OWNER.
- D. In the event of unavoidable delays in the progress of the work, reasonable extensions in the time will be granted by the OWNER, provided, however, that the CONSULTANT shall request extensions in writing giving the reason therefore.
- E. Unless otherwise provided in this Agreement, the CONSULTANT and agents, servants, employees, or sub-consultants shall have no responsibility for the discovery, presence, handling, removal or disposal of or exposure of persons to hazardous materials in any form at the project site, including but not limited to asbestos, asbestos products, polychlorinated biphenyl (PCB) or other toxic substances.
- F. It is further agreed that this Agreement and all contracts entered into under the provisions of this Agreement shall be binding upon the parties hereto and their successors and assigns.
- G. Neither the OWNER'S review, approval or acceptance of, nor payment for, any of the work or services required to be performed by the CONSULTANT under this Agreement shall be construed to operate as a waiver of any right under this Agreement or any cause of action arising out of the performance of this Agreement.
- H. It is specifically agreed between the parties executing this Agreement, that it is not intended by any of the provisions of any part of this Agreement to create the public or any member thereof a third party beneficiary hereunder, or to authorize anyone not a party to this Agreement to maintain a suit for damage pursuant to the terms of provisions of this Agreement.
- I. The CONSULTANT hereby certifies that:
 - 1. The CONSULTANT has not employed or retained for a commission, percentage, brokerage, contingent fee, or other consideration, any firm or person (other than a bona fide employee working solely for the CONSULTANT) to solicit or secure this Agreement,
 - 2. The CONSULTANT has not agreed, as an express or implied condition for obtaining this Agreement, to employ or retain the services of any firm or person in connection with carrying out this Agreement,
 - 3. The CONSULTANT has not paid or agreed to pay to any firm, organization, or person (other than a bona fide employee working solely for the above CONSULTANT) any fee, contribution, donation, or consideration of any kind for, or in connection with, procuring or carrying out this Agreement, except as here expressly stated (if any).
 - 4. By acceptance of this Agreement that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency (49 CFR Part 29). It further agrees by submitting this Agreement that it will include this clause without modification in all lower tier transactions,

solicitations, proposals, contracts, and subcontracts. Where the CONSULTANT or any lower tier participant is unable to certify to this statement, it shall attach an explanation to this Agreement.

5. The CONSULTANT agrees to abide by the foreign trade restrictions as set out in EXHIBIT F, attached hereto and incorporated herein by reference. The CONSULTANT acknowledges that this certification is to be furnished to the Federal Aviation Administration, in connection with this Agreement involving participation of Airport Improvement Program (AIP) funds and is subject to applicable State and Federal laws, both criminal and civil.
6. That the CONSULTANT and subconsultant's overhead rates used on this Contract are consistent with Federal cost principles contained in 48 CFR, Part 31, and to provide to the OWNER such certification prior to the execution of the Agreement.
7. The CONSULTANT agrees that it will comply with the pertinent Federal statutes, Executive orders and such rules as are promulgated to assure that no person shall, on the ground of race, creed, color, national origin, sex, age, or handicap be excluded from participating in any activity conducted with or benefiting from Federal assistance.

This provision binds the CONSULTANT bid solicitation period through the completion of the Contract. This provision is in addition to that required of Title VI of the Civil Rights Act of 1964.

K. Lobbying and Influencing Federal Employees (49 CFR Part 20)

1. No Federal appropriated funds shall be paid, by or on behalf of the contractor, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of any Federal grant and the amendment or modification of any Federal grant.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any Federal grant, the contractor shall complete and submit Standard Form-LLL, "Disclosure of Lobby Activities," in accordance with its instructions.

IN WITNESS WHEREOF, the OWNER and the CONSULTANT have executed this Agreement as of the date first written above.

ATTEST:

WICHITA AIRPORT AUTHORITY
WICHITA, KANSAS

By: _____
Karen Sublett, City Clerk

By: _____
Carl Brewer, President

"OWNER"

By: _____
Victor D. White, Director of Airports

ATTEST:

Professional Engineering Consultants
303 S. Topeka
Wichita, Kansas 67202

By: _____
D. E. Hager

By: _____
Dan Bl

Title: _____
COO PEC

Title: _____
Principal PEC

"CONSULTANT"

APPROVED AS TO FORM:

Director of Law

Date: _____
7-19-11

ATTACHMENTS: EXHIBIT A – Scope of Services and Site Plan
EXHIBIT B - Non-Discrimination and EEO Program
EXHIBIT C - Civil Rights Act
EXHIBIT D - Schedule
EXHIBIT E - Payment Provisions
EXHIBIT F - Foreign Trade Restrictions

RECEIVED

JUL 13 2011

REPORT ENGINEERING

SCOPE OF SERVICES
AIRFIELD ELECTRICAL SYSTEM REPLACEMENT
WICHITA MID CONTINENT AIRPORT

THE ENGINEER AGREES to furnish and perform the various PROJECT related engineering and technical services in accordance with the following provisions:

A. PHASE I, ENGINEERING PLANS, SPECIFICATIONS, AND CONSTRUCTION COST ESTIMATES. When authorized by the OWNER, the ENGINEER will proceed with the preparation of Engineering Plans, Contract Documents and Cost Estimates for the following PROJECT elements; 1) Replacement of a portion of the taxiway and runway electrical Systems and 2) Repair of electrical systems infrastructure. Phase I(Exhibit A) services shall conclude with advertisement of the PROJECT to bid. Specifically, the ENGINEER will undertake the following tasks:

1. Perform visual survey of the Airfield Electrical System Replacement Project to verify existing conditions and assess damaged items for repair or replacement.
2. Prepare base plans for all PROJECT elements noted. Record drawings will be used to create base drawings and for circuit locations. Consultant will field check the preliminary design for accuracy of as-built plans and make necessary corrections to base plans.
3. Design efforts for Airfield Electrical System Replacement Design will include:
 - a. Replacement of edge lighting including light fixture replacement, and replacement of all electrical associated electrical circuiting for Runway 14-32. Existing incandescent lighting will be replaced with quartz type.
 - b. Replacement of all taxiway edge lighting including light fixture replacement and replacement of all electrical circuiting for

Taxiways C, D, K, R, E, E-1, E-2, E-3. Replacement lighting will be of the LED type.

- c. New signage and replacement of electrical circuits for Taxiway D. This design will include the addition of Taxiway D Signage for compliance with RSAT "ACTION ITEM" recommendations.
- d. New signage and replacement of electrical circuits for Taxiway L and L-1 to meet the RSAT "ACTION ITEM" recommendations.
- e. Replacement of constant current regulators (Ferro resonant type), isolation transformers, and labeling for all cabling to be replaced.
- f. Test Loops for taxiway and runway lighting circuits to be replaced within the project area.
- g. Cleaning of all lighting cans, conduits, manholes, and hand holes will be specified for the project area.
- h. Replacement of several (approximately 10-11) electrical manhole and hand hole lids with new lids including spring assist access doors. All structures in the project area will be provided with labels per airport standards.
- i. Addition of non-metallic cable management in all manholes and hand holes.
- j. Gravity drainage for edge light conduits for manhole north of Taxiway C and drainage for raceway systems at the south end of Taxiway D.
- k. Automatic cable resistance monitoring will be evaluated, and if within budget, will be added for each circuit to provide early warning for circuiting with potential for faults.
- l. Retro-reflective markers will be evaluated for permanent installation on all taxiway lighting. If cost of markers is within the budget, markers will be specified for all replaced taxiway lights. At a minimum, markers will be specified for installation on portions of Taxiway D to ensure operation of air cargo area during the construction duration.

- m. Replace six wind cones near ends of runways with new LED lighted wind cones.
 - n. Reprogram and commission existing Crouse Hinds Airfield Lighting Control and Monitoring system.
 - o. Replace existing signage, add new signage, and replacement of electrical circuits for Taxiway N to meet RSAT recommendations.
 - p. Replace existing signage, add new signage, and replacement of electrical circuits for Taxiway M to meet RSAT recommendations.
 - q. Provide Life Cycle Cost Analysis for justification of replacement of incandescent runway edge lights with quartz type lighting. Analysis to follow FAA guidelines.
 - r. Provide Life Cycle Cost Analysis for justification of replacement of incandescent taxiway edge lights with LED type lighting. Analysis to follow FAA guidelines.
 - s. Prepare construction traffic operation/safety plan.
 - t. Prepare construction operations and phasing plan.
 - u. Design in accordance with FAA Advisory Circulars most current editions, and related Central Region modifications.
 - v. Design relocation of designator/locator signage array currently located adjacent to runway hold short points at taxiways A (north-end future A1) A2, A5, A7, A8 so they are closer to Taxiway N to meet RSAT requirements.
4. Meet with OWNER periodically to discuss matters pertinent to the PROJECT design. Develop minutes of each meeting and distribute copies within five (5) days.
5. Submit two (2) sets of design concept 65% plans to OWNER for review and concurrence. Schedule and attend review meetings with OWNER. The meeting agenda shall include the foregoing topics as well as other identified, potential PROJECT "issues".

6. Early in design phase, submit Engineer's Report including the life cycle cost analysis (LCCA) for taxiway and runway lighting.
7. Submit three (3) sets of 90% plans, specifications, and estimates to the FAA for office check review, along with the Engineer's Report and documentation of the PROJECT design, and submit same to OWNER.
8. Submit two (2) sets of approved final plans and specifications to the FAA, and three (3) sets of same to the OWNER with updated construction cost estimate.

B. PHASE II, BIDDING PHASE SERVICES. When requested by the OWNER, the ENGINEER shall perform the following tasks in conjunction with the advertising and letting of Phase I of the PROJECT to bid.

1. Print plans and specifications. (Printing costs to be billed directly by the printer to the OWNER.)
2. Distribute plans and specifications to "plan room" sites.
3. Issue plans, specifications, and addenda to prospective bidders, the FAA and OWNER.
4. Maintain plan holders list.
5. Entertain questions from prospective bidders.
6. Facilitate Pre-Bid Conference.
7. Prepare "official" Engineers Estimate of Construction Cost.
8. Issue Addenda.

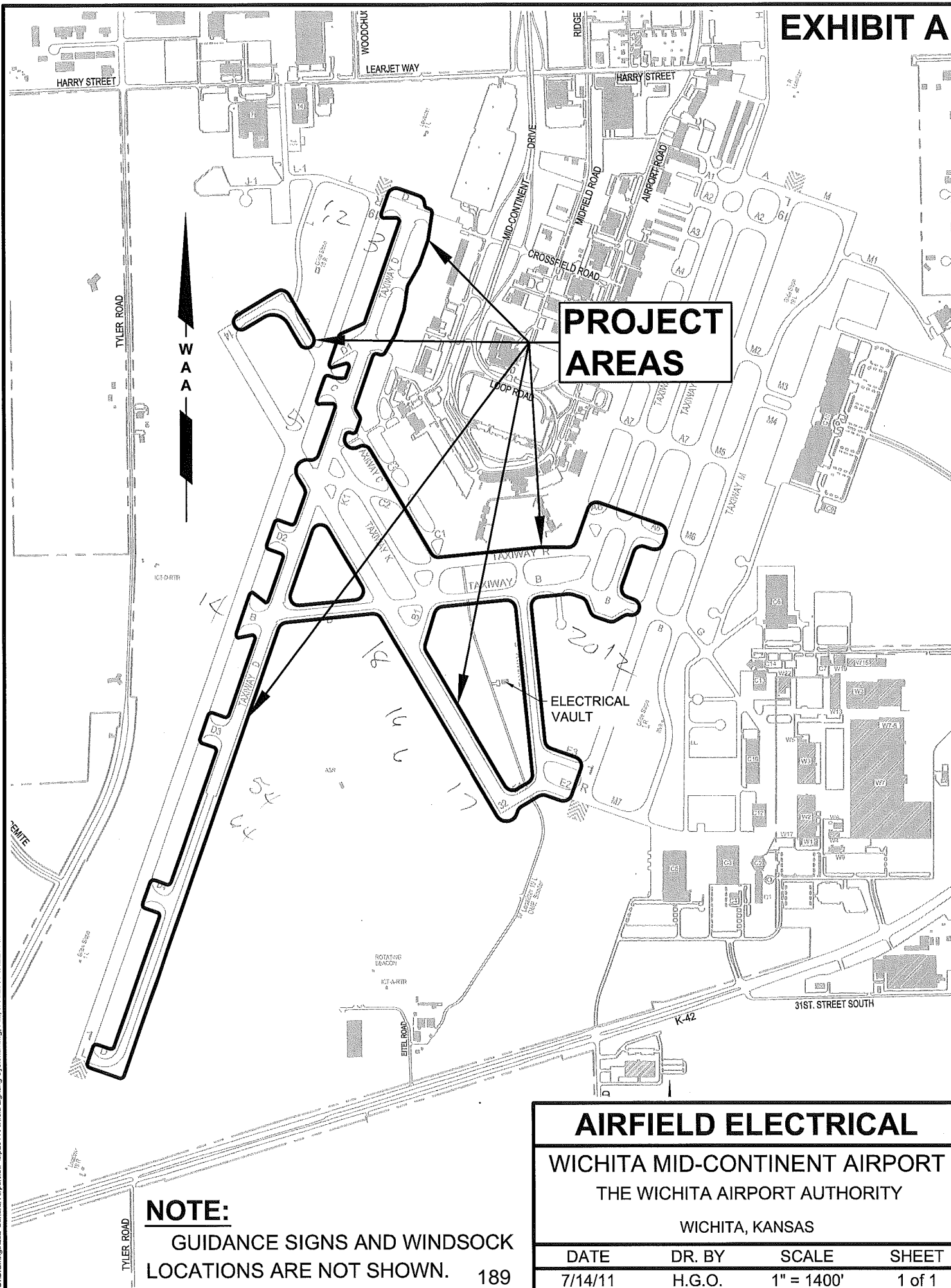
C. TIME OF PERFORMANCE.

1. PHASE I, FINAL ENGINEERING PLANS, SPECIFICATIONS, AND CONSTRUCTION COST ESTIMATES. The Engineer shall commence work on PHASE I of the PROJECT within ten (10) days following authorization by the OWNER to proceed and shall endeavor to complete the plans and specifications in accordance with the following schedule, except that the ENGINEER shall not be responsible or held liable for delays occasioned by the action or inaction of the OWNER or other agencies.
 - a. Preliminary Plans and Specifications (65% plans) submittal to the OWNER and FAA Central Region within 90 calendar days following concurrence by OWNER in a design concept for the project elements.
 - b. OWNER Review of 65% plans within 14 Days of 65% submittal.
 - c. 90% Plans and Specifications submittal to OWNER and FAA Central Region within 30 calendar days following receipt of 65% Preliminary Plans review comments from OWNER.
 - d. OWNER and FAA review of 90% plans within 21 days of 90% submittal.
 - e. 100% Plans and Specifications submittal to OWNER and FAA Central Region within 30 calendar days following receipt of 90% Plans review of the 90% comments from the OWNER and FAA.
2. PHASE II, BIDDING PHASE SERVICES. The time to complete PHASE II services shall run concurrent with the time allotted to advertising the PROJECT to bid.
3. PHASE III, CONSTRUCTION PHASE SERVICES. Time of performance for PHASE III services shall be as established by Supplemental Agreement.

D. EXCLUSIONS.

1. Design modification of utility infrastructure other than electrical systems.

EXHIBIT A



**PROJECT
AREAS**

ELECTRICAL
VAULT

NOTE:
GUIDANCE SIGNS AND WINDSOCK
LOCATIONS ARE NOT SHOWN.

AIRFIELD ELECTRICAL			
WICHITA MID-CONTINENT AIRPORT			
THE WICHITA AIRPORT AUTHORITY			
WICHITA, KANSAS			
DATE	DR. BY	SCALE	SHEET
7/14/11	H.G.O.	1" = 1400'	1 of 1

1729.612 14 16 17 18 20 24 10

**REVISED NON-DISCRIMINATION AND
EQUAL EMPLOYMENT OPPORTUNITY/AFFIRMATIVE ACTION PROGRAM
REQUIREMENTS STATEMENT FOR CONTRACTS OR AGREEMENTS**

During the term of this contract, the contractor or subcontractor, vendor or supplier of the City, by whatever term identified herein, shall comply with the following Non-Discrimination--Equal Employment Opportunity/Affirmative Action Program Requirements:

- A. During the performance of this contract, the contractor, subcontractor, vendor or supplier of the City, or any of its agencies, shall comply with all the provisions of the Civil Rights Act of 1964, as amended: The Equal Employment Opportunity Act of 1972; Presidential Executive Orders 11246, 11375, 11131; Part 60 of Title 41 of the Code of Federal Regulations; the Age Discrimination in Employment Act of 1967; the Americans with Disabilities Act of 1990 and laws, regulations or amendments as may be promulgated thereunder.
- B. Requirements of the State of Kansas:
 - 1. The contractor shall observe the provisions of the Kansas Act against Discrimination (Kansas Statutes Annotated 44-1001, et seq.) and shall not discriminate against any person in the performance of work under the present contract because of race, religion, color, sex, disability, and age except where age is a bona fide occupational qualification, national origin or ancestry;
 - 2. In all solicitations or advertisements for employees, the contractor shall include the phrase, "Equal Opportunity Employer", or a similar phrase to be approved by the "Kansas Human Rights Commission";
 - 3. If the contractor fails to comply with the manner in which the contractor reports to the "Kansas Human Rights Commission" in accordance with the provisions of K.S.A. 1976 Supp. 44-1031, as amended, the contractor shall be deemed to have breached this contract and it may be canceled, terminated or suspended in whole or in part by the contracting agency;
 - 4. If the contractor is found guilty of a violation of the Kansas Act against Discrimination under a decision or order of the "Kansas Human Rights Commission" which has become final, the contractor shall be deemed to have breached the present contract, and it may be canceled, terminated or suspended in whole or in part by the contracting agency;
 - 5. The contractor shall include the provisions of Paragraphs 1 through 4 inclusive, of this Subsection B, in every subcontract or purchase so that such provisions will be binding upon such subcontractor or vendor.

C. Requirements of the City of Wichita, Kansas, relating to Non-Discrimination -- Equal Employment Opportunity/Affirmative Action Program Requirements:

1. The vendor, supplier, contractor or subcontractor shall practice Non-Discrimination -- Equal Employment Opportunity in all employment relations, including but not limited to employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The vendor, supplier, contractor or subcontractor shall submit an Equal Employment Opportunity or Affirmative Action Program, when required, to the Department of Finance of the City of Wichita, Kansas, in accordance with the guidelines established for review and evaluation;
2. The vendor, supplier, contractor or subcontractor will, in all solicitations or advertisements for employees placed by or on behalf of the vendor, supplier, contractor or subcontractor, state that all qualified applicants will receive consideration for employment without regard to race, religion, color, sex, "disability, and age except where age is a bona fide occupational qualification", national origin or ancestry. In all solicitations or advertisements for employees the vendor, supplier, contractor or subcontractor shall include the phrase, "Equal Opportunity Employer", or a similar phrase;
3. The vendor, supplier, contractor or subcontractor will furnish all information and reports required by the Department of Finance of said City for the purpose of investigation to ascertain compliance with Non-Discrimination -- Equal Employment Opportunity Requirements. If the vendor, supplier, contractor, or subcontractor fails to comply with the manner in which he/she or it reports to the City in accordance with the provisions hereof, the vendor, supplier, contractor or subcontractor shall be deemed to have breached the present contract, purchase order or agreement and it may be canceled, terminated or suspended in whole or in part by the City or its agency; and further Civil Rights complaints, or investigations may be referred to the State;
4. The vendor, supplier, contractor or subcontractor shall include the provisions of Subsections 1 through 3 inclusive, of this present section in every subcontract, subpurchase order or subagreement so that such provisions will be binding upon each subcontractor, subvendor or subsupplier.
5. If the contractor fails to comply with the manner in which the contractor reports to the Department of Finance as stated above, the contractor shall be deemed to have breached this contract and it may be canceled, terminated or suspended in whole or in part by the contracting agency;

D. Exempted from these requirements are:

1. Those contractors, subcontractors, vendors or suppliers who have less than four (4) employees, whose contracts, purchase orders or agreements cumulatively total less than five thousand dollars (\$5,000)

during the fiscal year of said City are exempt from any further Equal Employment Opportunity or Affirmative Action Program submittal.

2. Those vendors, suppliers, contractors or subcontractors who have already complied with the provisions set forth in this section by reason of holding a contract with the Federal government or contract involving Federal funds; provided that such contractor, subcontractor, vendor or supplier provides written notification of a compliance review and determination of an acceptable compliance posture within a preceding forty-five (45) day period from the Federal agency involved.

**CIVIL RIGHTS ACT OF 1964, TITLE VI - 49 CFR PART 21
CONTRACTUAL REQUIREMENTS**

During the performance of this contract, the CONSULTANT, for itself, its assignees and successors in interest agrees as follows:

1. Compliance with Regulations. The CONSULTANT shall comply with the Regulations relative to nondiscrimination in federally assisted programs of the Department of Transportation (hereinafter, "DOT") Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this contract.
2. Nondiscrimination. The CONSULTANT, with regard to the work performed by it during the contract, shall not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The CONSULTANT shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.
3. Solicitations for Subcontracts, including Procurement of Materials and Equipment. In all solicitations either by competitive bidding or negotiation made by the CONSULTANT for work to be performed under a subcontract, including procurement of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the CONSULTANT of the CONSULTANT's obligations under this contract and the Regulations relative to nondiscrimination on the grounds of race, color, or national origin.
4. Information and Reports. The CONSULTANT shall provide all information and reports required by the Regulations or directives issued pursuant thereto and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the OWNER or the Federal Aviation Administration (FAA) to be pertinent to ascertain compliance with such Regulations, orders, and instructions. Where any information required of the CONSULTANT is in the exclusive possession of another who fails or refuses to furnish this information, the CONSULTANT shall so certify to the OWNER or the FAA, as appropriate, and shall set forth what efforts it has made to obtain the information.
5. Sanctions for Noncompliance. In the event of the CONSULTANT's noncompliance with the nondiscrimination provisions of this contract, the OWNER shall impose such contract sanctions as it or the FAA may determine to be appropriate, including, but not limited to:
 - a. Withholding of payments to the CONSULTANT under the contract until the CONSULTANT complies, and/or
 - b. Cancellation, termination, or suspension of the contract, in whole or in part.
6. Incorporation of Provisions. The CONSULTANT shall include the provisions of Paragraphs 1 through 5 in every subcontract, including procurement of materials and leases of equipment, unless exempt by the Regulations or directives issued pursuant thereto. The CONSULTANT shall take such action with respect to any subcontract or procurement as the OWNER or the FAA may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, however, that in the event the CONSULTANT becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the CONSULTANT may request the OWNER to enter into such litigation to protect the interests of the OWNER and, in addition, the CONSULTANT may request the United States to enter into such litigation to protect the interests of the United States.

AIRPORT AND AIRWAY IMPROVEMENT ACT OF 1982, SECTION 520
GENERAL CIVIL RIGHTS PROVISIONS

The CONSULTANT assures that it will comply with pertinent statutes, Executive orders and such rules as are promulgated to assure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or handicap be excluded from participating in any activity conducted with or benefiting from Federal assistance. This provision obligates the CONSULTANT or its transferee for the period during which Federal assistance is extended to the airport program, except where Federal Assistance is to provide, or is in the form of personal property or real property or interest therein or structures or improvements thereon. In these cases the provision obligates the party or any transferee for the longer of the following periods: (a) the period during which the property is used by the OWNER or any transferee for a purpose for which Federal assistance is extended, or for another purpose involving the provision of similar services or benefits or (b) the period during which the OWNER or any transferee retains ownership or possession of the property. In the case of CONSULTANTS, this provision binds the CONSULTANTS from the bid solicitation period through the completion of the contract. This provision is in addition to that required of Title VI of the Civil Rights Act of 1964.



Wichita Airport Authority Airfield Electrical System Replacement Design SCHEDULE

TASKS	2011					2012	
	A	S	O	N	D	J	F
Notice to Proceed	★						
Preliminary Plans and Specifications Submitted to OWNER and FAA Central Region							
OWNER Review of 65% Plans							
90% Plans and Specifications Submittal to OWNER and FAA Central Region							
OWNER and FAA Review of 90% Plans							
100% Plans and Specifications Submittal to OWNER and FAA Center Region							

ENGINEERING FEE ESTIMATE

PROFESSIONAL ENGINEERING CONSULTANTS, P.A.

ENGINEERS

WICHITA, KANSAS

PROJECT: Airfield Electrical System Replacement Design

LOCATION: Wichita Mid Continent Airport

WORK ITEM: Design P, S. & E.

PROJECT NO 11354-019

DATE: 07-15-11

DESCRIPTION:

(I) SALARY COSTS

POSITION TITLE	RATE	MAN HOURS	AMOUNT	TOTAL (SUBTOTAL)
1. PRINCIPALS	\$45.00	10	\$450.00	
2. PROJECT MANAGER	\$38.75	34	\$1,317.50	
3. PROJECT ENGINEER	\$33.80	235	\$7,943.00	
4. DESIGN ENGINEER	\$25.20	264	\$6,652.80	
5. DESIGN TECHNICIAN	\$24.60	234	\$5,756.40	
6. SENIOR DRAFTER	\$20.20	276	\$5,575.20	
7. DRAFTER				
8. SURVEYOR, PARTY CHIEF				
SUBTOTAL		1053		\$27,694.90

(II) OVERHEAD	1.3124 X (I)	\$36,347.00
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(III) SUBTOTAL (I + II)	\$64,041.90
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(IV) FIXED FEE	15%	\$9,606.00
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(V) DIRECT COSTS

1. PREMIUM TIME				
2. CAD PER HOUR	\$18.00	276	\$4,968.00	
3. TRAVEL PER MILE				
4. PRINTING (SPEC. ETC.)	@ Cost		\$200.00	
5. ALLIED LABS - SURVEY				
6. CUSTOM ENGINEERING (DBE)		1	\$4,902.35	
7. ALLIED LABS - GEOTECH				
SUBTOTAL				\$10,070.35

(VI) TOTAL FEE FOR PROJECT DESIGN (III + IV + V)	\$83,719.00
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BIDDING PHASE COSTS**(I) SALARY COSTS**

POSITION TITLE	RATE	MAN HOURS	AMOUNT	TOTAL (SUBTOTAL)
1. PRINCIPALS	\$45.00	6	\$270.00	
2. PROJECT MANAGER	\$38.75	60	\$2,325.00	
3. DESIGN TECHNICIAN	\$24.60	12	\$295.20	
SUBTOTAL		78		\$2,890.20

(II) OVERHEAD	1.3124 X (I)	\$3,793.10
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(III) SUBTOTAL (I + II)	\$6,684.00
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(IV) FIXED FEE	15%	\$1,002.60
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(V) DIRECT COSTS

1. CAD PER HOUR	\$18.00			
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(VI) TOTAL FEE FOR BIDDING PHASE (III + IV + V)	\$7,687.00
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TRADE RESTRICTIONS

The CONSULTANT or subconsultant, by submission of an offer and/or execution of a contract, certifies that it:

- a. is not owned or controlled by one or more citizens of a foreign country included in the list of countries that discriminate against U.S. firms published by the Office of the United States Trade Representative (USTR);
- b. has not knowingly entered into any contract or subcontract for this project with a person that is a citizen or national of a foreign country on said list, or is owned or controlled directly or indirectly by one or more citizens or nationals of a foreign country on said list;
- c. has not procured any product nor subcontracted for the supply of any product for use on the project that is produced in a foreign country on said list.

Unless the restrictions of this clause are waived by the Secretary of Transportation in accordance with 49 CFR 30.17, no contract shall be awarded to a consultant or subconsultant who is unable to certify to the above. If the consultant knowingly procures or subcontracts for the supply of any product or service of a foreign country on said list for use on the project, the Federal Aviation Administration may direct through the Sponsor cancellation of the contract at no cost to the Government.

Further, the consultant agrees that, if awarded a contract resulting from this solicitation, it will incorporate this provision for certification without modification in each contract and in all lower tier subcontracts. The contractor may rely on the certification of a prospective subcontractor unless it has knowledge that the certification is erroneous.

The consultant shall provide immediate written notice to the Sponsor if the consultant learns that its certification or that of a subconsultant was erroneous when submitted or has become erroneous by reason of changed circumstances. The subconsultant agrees to provide written notice to the consultant if at any time it learns that its certification was erroneous by reason of changed circumstances.

This certification is a material representation of fact upon which reliance was placed when making the award. If it is later determined that the consultant or subconsultant knowingly rendered an erroneous certification, the Federal Aviation Administration may direct through the Sponsor cancellation of the contract or subcontract for default at no cost to the Government.

Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render, in good faith, the certification required by this provision. The knowledge and information of a contractor is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

This certification concerns a matter within the jurisdiction of an agency of the United States of America and the making of a false, fictitious, or fraudulent certification may render the maker subject to prosecution under Title 18, United States Code, Section 1001.

Application for Federal Assistance SF-424

*1. Type of Submission:

- ☐ Preapplication
☒ Application
☐ Changed/Corrected Application

*2. Type of Application

- ☒ New
☐ Continuation
☐ Revision

* If Revision, select appropriate letter(s):

*Other (Specify)

*3. Date Received:

4. Applicant Identifier:

5a. Federal Entity Identifier:

*5b. Federal Award Identifier:

State Use Only:

6. Date Received by State:

7. State Application Identifier:

8. APPLICANT INFORMATION:

*a. Legal Name: Wichita Airport Authority

*b. Employer/Taxpayer Identification Number (EIN/TIN):
48-6000653

*c. Organizational DUNS:
124970641

d. Address:

*Street 1: 2173 Air Cargo Rd.
Street 2: _____
*City: Wichita
County: Sedgwick
*State: KS
Province: _____
*Country: USA
*Zip / Postal Code 67209

e. Organizational Unit:

Department Name:
Department of Airports

Division Name:
Airport Engineering

f. Name and contact information of person to be contacted on matters involving this application:

Prefix: Mr. *First Name: Victor
Middle Name: _____
*Last Name: White
Suffix: _____

Title: Director of Airports

Organizational Affiliation:

*Telephone Number: 316-946-4700	Fax Number: 316-946-1898
*Email: vwhite@wichita.gov	

OMB Number: 4040-0004
Expiration Date: 03/31/2012

Application for Federal Assistance SF-424
<p>*9. Type of Applicant 1: Select Applicant Type: C. City or Township Government</p> <p>Type of Applicant 2: Select Applicant Type:</p> <p>Type of Applicant 3: Select Applicant Type:</p> <p>*Other (Specify)</p>
<p>*10. Name of Federal Agency: Federal Aviation Administration</p>
<p>11. Catalog of Federal Domestic Assistance Number: 20.106</p> <p>CFDA Title: Airport Improvement Program</p>
<p>12. Funding Opportunity Number: 3-20-0088-62</p> <p>Title: Airfield Electrical System Replacement</p>
<p>13. Competition Identification Number: _____</p> <p>Title: _____</p>
<p>14. Areas Affected by Project (Cities, Counties, States, etc.): Wichita, Sedgwick County, Kansas</p>

***15. Descriptive Title of Applicant's Project:**

Portions of the airfield electrical system are in need of replacement at Mid-Continent Airport. This project will replace cabling, edge lights, electrical equipment, guidance signage and reconstruct damaged electrical manholes.

Attach supporting documents as specified in agency instructions.

Application for Federal Assistance SF-424**16. Congressional Districts Of:**

*a. Applicant: 4th

*b. Program/Project: 4th

Attach an additional list of Program/Project Congressional Districts if needed.

17. Proposed Project:

*a. Start Date: 7-26-2011

*b. End Date: 2-10-2012

18. Estimated Funding (\$):

*a. Federal	<u>\$87,024.00</u>
*b. Applicant	<u>\$4,580.00</u>
*c. State	<u> </u>
*d. Local	<u> </u>
*e. Other	<u> </u>
*f. Program Income	<u> </u>
*g. TOTAL	<u>\$91,604.00</u>

***19. Is Application Subject to Review By State Under Executive Order 12372 Process?**

- ☐ a. This application was made available to the State under the Executive Order 12372 Process for review on ____.
- ☐ b. Program is subject to E.O. 12372 but has not been selected by the State for review.
- ☒ c. Program is not covered by E. O. 12372

***20. Is the Applicant Delinquent On Any Federal Debt? (If "Yes", provide explanation.)**

☐ Yes ☒ No

21. *By signing this application, I certify (1) to the statements contained in the list of certifications** and (2) that the statements herein are true, complete and accurate to the best of my knowledge. I also provide the required assurances** and agree to comply with any resulting terms if I accept an award. I am aware that any false, fictitious, or fraudulent statements or claims may subject me to criminal, civil, or administrative penalties. (U. S. Code, Title 218, Section 1001)

☒ ** I AGREE

** The list of certifications and assurances, or an internet site where you may obtain this list, is contained in the announcement or agency specific instructions.

Authorized Representative:

Prefix: Mr. *First Name: Victor

Middle Name:

*Last Name: White

Suffix:

*Title: Director of Airports

*Telephone Number: 316-946-4700

Fax Number: 316-946-4793

* Email: vwhite@wichita.gov

PART II

PROJECT APPROVAL INFORMATION
SECTION AItem 1.

Does this assistance request require State, local, regional, or other priority rating?

☐ Yes ☒ No

Name of Governing Body:

Priority:

Item 2.

Does this assistance request require State, or local advisory, educational or health clearances?

☐ Yes ☒ NoName of Agency or Board:
(Attach Documentation)Item 3.

Does this assistance request require clearinghouse review in accordance with OMB Circular A-95?

☐ Yes ☒ No

(Attach Comments)

Item 4.

Does this assistance request require State, local, regional or other planning approval?

☐ Yes ☒ No

Name of Approving Agency:

Date: / /

Item 5.

Is the proposal project covered by an approved comprehensive plan?

☐ Yes ☒ No

Check one:

State

Local

Regional

☐
☐
☐

Location of Plan:

Item 6.

Will the assistance requested serve a Federal installation?

☐ Yes ☒ No

Name of Federal Installation:

Federal Population benefiting from Project:

Item 7.

Will the assistance requested be on Federal land or installation?

☐ Yes ☒ No

Name of Federal Installation:

Location of Federal Land:

Percent of Project:

Item 8.

Will the assistance requested have an impact or effect on the environment?

☐ Yes ☒ No

See instruction for additional information to be provided

Item 9.

Will the assistance requested cause the displacement of individuals, families, businesses, or farms?

☐ Yes ☒ No

Number of:

Individuals:

Families:

Businesses:

Farms:

Item 10.

Is there other related Federal assistance on this project previous, pending, or anticipated?

☐ Yes ☒ No

See instructions for additional information to be provided.

PART II - SECTION C

The Sponsor hereby represents and certifies as follows:

1. Compatible Land Use. - The Sponsor has taken the following actions to assure compatible usage of land adjacent to or in the vicinity of the airport:

In as far as this is within our power, the Wichita Airport Authority of Wichita, Kansas, will affirmatively work to obtain appropriate zoning by the Wichita Sedgwick County Metropolitan Area Planning commission which has zoning authority to take action to restrict the use of land in the immediate vicinity of Mid-Continent Airport. The current zoning ordinance has obstruction zoning prohibiting certain manufacturing facilities, which produce smoke, dust, gaseous fumes, and electrical interference or glare impairing the visibility of pilots.

2. Defaults. - The Sponsor is not in default on any obligation to the United States or any agency of the United States Government relative to the development, operation, or maintenance of any airport, except as stated herewith:

NONE

3. Possible Disabilities. - There are no facts or circumstances (including the existence of effective or proposed leases, use agreements or other legal instruments affecting use of the Airport or the existence of pending litigation or other legal proceedings) which in reasonable probability might make it impossible for the Sponsor to carry out and complete the Project or carry out the provisions of Part V of this Application, either by limiting its legal or financial ability or otherwise, except as follows:

NONE

4. Consistency with Local Plans. - The project is reasonably consistent with plans existing at the time of submission of this application) of public agencies that are authorized by the State in which the project is located to plan for the development of the area surrounding the airport.

YES

5. Consideration of Local Interest - It has given fair consideration to the interest of communities in or near where the project may be located.

YES

6. Consultation with Users. In making a decision to undertake any airport development project under Title 49, United States Code, it has undertaken reasonable consultations with affected parties using the airport which project is proposed.

YES

7. Public Hearings. - In projects involving the location of an airport, an airport runway or a major runway extension, it has afforded the opportunity for public hearings for the purpose of considering the economic, social, and environmental effects of the airport or runway location and its consistency with goals and objectives of such planning as has been carried out by the community and it shall, when requested by the Secretary, submit a copy of the transcript of such hearings to the Secretary. Further, for such projects, it has on its management board either voting representation from the communities where the project is located or has advised the communities that they have the right to petition the Secretary concerning a proposed project.

NA

8. Air and Water Quality Standards. - In projects involving airport location, a major runway extension, or runway location it will provide for the Governor of the state in which the project is located to certify in writing to the Secretary that the project will be located, designed, constructed, and operated so as to comply with applicable and air and water quality standards. In any case where such standards have not been approved and where applicable air and water quality standards have been promulgated by the Administrator of the Environmental Protection Agency, certification shall be obtained from such Administrator. Notice of certification or refusal to certify shall be provided within sixty days after the project application has been received by the Secretary.

NA

PART II - SECTION C (Continued)

9. Exclusive Rights – There is no grant of an exclusive right for the conduct of any aeronautical activity at any airport owned or controlled by the Sponsor except as follows:

NA

10. Land. – (a) The sponsor holds the following property interest in the following areas of land* which are to be developed or used as part of or in connection with the Airport subject to the following exceptions, encumbrances, and adverse interests, all of which areas are identified on the aforementioned property map designated as Exhibit "A":

The Wichita Airport Authority of Wichita, Kansas, has the Fee Simple Title to all land comprising Mid-Continent Airport, free and clear of all encumbrances and/or restrictions, subject however, to the leases and/or use agreements

The Sponsor further certifies that the above is based on a title examination by a qualified attorney or title company and that such attorney or title company has determined that the Sponsor holds the above property interests.

(b) The Sponsor will acquire within a reasonable time, but in any event prior to the start of any construction work under the Project, the following property interest in the following areas of land* on which such construction work is to be performed, all of which areas are identified on the aforementioned property map designated as Exhibit "A":

NA

(c) The Sponsor will acquire within a reasonable time, and if feasible prior to the completion of all construction work under the Project, the following property interest in the following areas of land* which are to be developed or used as part of or in connection with the Airport as it will be upon completion of the Project, all of which areas are identified on the aforementioned property map designated as Exhibit "A"

NA

**State character of property interest in each area and list and identify for each all exceptions, encumbrances, and adverse interests of every kind and nature, including liens, easements, leases, etc. The separate areas of land need only be identified here by the area numbers shown on the property map.*

PART III - BUDGET INFORMATION - CONSTRUCTION**SECTION A - GENERAL**

1. Federal Domestic Assistance Catalog No. 20.106

2. Functional or Other Breakout.....

SECTION B -CALCULATION OF FEDERAL GRANT

Cost Classification	Use only for revisions		Total Amount Required
	Latest Approved Amount	Adjustment + or (-)	
1. Administration expense	\$	\$	\$
2. Preliminary expense			
3. Land, structures, right-of-way			
4. Architectural engineering basic fees			91,406.00
5. Other Architectural engineering fees			
6. Project inspection fees			
7. Land development			
8. Relocation Expenses			
9. Relocation payments to Individuals and Businesses			
10. Demolition and removal			
11. Construction and project improvement			
12. Equipment			
13. Miscellaneous			
14. Total (Lines 1 through 13)			91,406.00
15. Estimated Income (if applicable)			
16. Net Project Amount (Line 14 minus 15)			91,406.00
17. Less: Ineligible Exclusions			
18. Add: Contingencies			
19. Total Project Amt. (Excluding Rehabilitation Grants)			91,406.00
20. Federal Share requested of Line 19 (95%)			86,836.00
21. Add Rehabilitation Grants Requested (100 Percent)			
22. Total Federal grant requested (lines 20 & 21)			86,836.00
23. Grantee share			4,570.00
24. Other shares			
25. Total Project (Lines 22, 23 & 24)	\$	\$	\$ 91,406.00

SECTION C - EXCLUSIONS

Classification	Ineligible for Participation (1)	Excluded From Contingency Provision (2)
a.	\$	\$
b.		
c.		
d.		
e.		
f.		
g. Totals	\$	\$

SECTION D - PROPOSED METHOD OF FINANCING NON-FEDERAL SHARE

27. Grantee Share	\$ 4,570.00
a. Securities	
b. Mortgages	
c. Appropriations (By Applicant)	
d. Bonds	4,570.00
e. Tax Levies	
f. Non Cash	
g. Other (Explain)	
h. TOTAL - Grantee share	4,570.00
28. Other Shares	
a. State	
b. Other	
c. Total Other Shares	
29. TOTAL	\$ 4,570.00

SECTION E - REMARKS

Grantee share will be paid with Airport revenues.

PART IV PROGRAM NARRATIVE (Attach - See Instructions)

PART IV
PROGRAM NARRATIVE
(Suggested Format)

DEPARTMENT OF TRANSPORTATION - FEDERAL AVIATION ADMINISTRATION

OMB NO. 2120-0569

PROJECT : Airfield Electrical System Replacement

AIRPORT : Mid-Continent Airport

1. Objective:

Portions of the airfield electrical system are in need of replacement at Mid-Continent Airport. This project will replace cabling, edge lights, electrical equipment, guidance signage and reconstruct damaged electrical manholes.

2. Benefits Anticipated:

The project will maintain a safe airfield to serve the aviation community.

3. Approach : *(See approved Scope of Work in Final Application)*

The project will be designed in 2011 with construction to begin in 2011.

4. Geographic Location:

Wichita, Kansas

5. If Applicable, Provide Additional Information:

NA

6. Sponsor's Representative: *(include address & telephone number)*

Victor White, A.A.E.
2173 Air Cargo Road
Wichita, KS 67209
316-946-4700

**U.S. DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION
AIRPORT IMPROVEMENT PROGRAM
SPONSOR CERTIFICATION
DRUG-FREE WORKPLACE**

Wichita Airport Authority

Mid-Continent

3-20-0088-62

(Sponsor)

(Airport)

(Project Number)

Description of Work:

Portions of the airfield electrical system are in need of replacement at Mid-Continent Airport. This project will replace cabling, edge lights, electrical equipment, guidance signage and reconstruct damaged electrical manholes.

Title 49, United States Code, section 47105(d), authorizes the Secretary to require certification from the sponsor that it will comply with the statutory and administrative requirements in carrying out a project under the Airport Improvement Program (AIP). General requirements on the drug-free workplace within Federal grant programs are described in Title 49, Code of Federal Regulations, Part 29. Sponsors are required to certify they will be, or will continue to provide, a drug-free workplace in accordance with the regulation. The AIP project grant agreement contains specific assurances on the Drug-Free Workplace Act of 1988.

Except for the certified items below marked not applicable (N/A), the list includes major requirements for this aspect of project implementation, although it is not comprehensive, nor does it relieve the sponsor from fully complying with all applicable statutory and administrative standards.

	Yes	No	N/A
1. A statement has been or will be published notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the sponsor's workplace, and specifying the actions to be taken against employees for violation of such prohibition.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2. An ongoing drug-free awareness program has been or will be established to inform employees about:			
a. The dangers of drug abuse in the workplace;			
b. The sponsor's policy of maintaining a drug-free workplace;	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
c. Any available drug counseling, rehabilitation, and employee assistance programs; and			
d. The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace.			
3. Each employee to be engaged in the performance of the work has been or will be given a copy of the statement required within item 1 above.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
4. Employees have been or will be notified in the statement required by item 1 above that, as a condition employment under the grant, the employee will:			
a. Abide by the terms of the statement; and	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b. Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction.			

I have prepared documentation shown below or attached hereto with site(s) for performance of work (street address, city, county, state, zip code). There are no such workplaces that are not identified below or in the attachment. I have prepared additional documentation for any above items marked "no" and attached it hereto. I certify that, for the project identified herein, responses to the forgoing items are accurate as marked and attachments are correct and complete.

	Location	Location	Location
Street Address:	2173 Air Cargo Road		
City:	Wichita		
State:	KS		
Zip code:	67209		

Name of Sponsor

Signature of Sponsor's Designated Official Representative

Victor White, A.A.E.

Type Name of Sponsor's Designated Official Representative

Director of Airports

Typed Title of Sponsor's Designated Official Representative

7-26-2011

Date of Signature

CERTIFICATE OF TITLE
FAA Central Region

To: Manager, Safety and Standards Branch

Subject: Mid-Continent Airport Airfield Electrical System Replacement

AIP Project No. 3-20-0088-62

This certification is made to satisfy (check **both** if applicable):

Part II Section C.10 of the Grant Application (FAA Form 5100-100) for existing airport property

☐ **Grant conditions relative to satisfactory title evidence for land being acquired under this project**

The Wichita Airport Authority (hereinafter referred to as the "Sponsor"), pursuant to Section 47105(d) of the Federal Aviation Administration Authorization Act of 1994 (and amendments), hereby certifies that satisfactory property interest to the land indicated herein is vested in the Sponsor, as required by obligations of the referenced Grant Agreement with the Federal Aviation Administration.

The Sponsor hereby certifies that it holds the quality of title described below, as of the date of the attorney's title opinion on which this certification is based.

Parcel Number (Per Exhibit A)	Quality of Interest (Fee, Easement*, etc.,)
1	Fee Simple
2	Fee Simple
3	Fee Simple
5	Fee Simple
6	Fee Simple
12	Fee Simple
14	Fee Simple
16	Fee Simple
17	Fee Simple
18	Fee Simple
20	Fee Simple
38	Fee Simple
54	Fee Simple
64	Fee Simple

Parcels must be listed. Avoid simply referencing the Exhibit A Property Map. Attach additional sheets as necessary.

*The Sponsor certifies that grantors of easements constitute all of the owners of the land affected by such easements, and they had such quality of title in and to such land as to enable them to convey the interest purported to be conveyed in and by the easements granted. No other interests or rights exist which are incompatible with or would interfere with the exercise and enjoyment by the Sponsor of the rights and interests conveyed.

Sponsor hereby certifies that the Sponsor or the Sponsor's attorney have reviewed, evaluated and subordinated to airport use where necessary, all encumbrances and that no outstanding encumbrances exist which might affect the maintenance, operation, or development of the airport.

Sponsor further certifies that if defects in the title require correction after acceptance of this Certificate of Title by the FAA, the Sponsor accepts full responsibility for clearing such defects, encumbrances, or exceptions at its own expense.

This Certificate of Title is based upon a current title opinion dated May 30, 2001 by the sponsor's attorney, Gary E. Rebenstorf.

Sponsor certifies that the title opinion referenced above corresponds with the "Exhibit A" airport property map dated April 17, 2007, AIP project number 3-20-0088-57. Although specific title evidence documents are not submitted herewith, copies of deeds and other appropriate evidence of title for the land are on file with the Sponsor and are available for inspection by the FAA.

It is understood that the FAA reserves the right to require additional information at any time.

Wichita Airport Authority

Name of Sponsor

Director of Airports

Signature and Title of Sponsor Official Authorized to Sign Grant Agreement

7-26-2011

Date

STANDARD DOT TITLE VI ASSURANCES

Wichita Airport Authority (hereinafter referred to as the Sponsor) hereby agrees that as a condition to receiving Federal financial assistance from the Department of Transportation (DOT), it will comply with Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.) and all requirements imposed by 49 CFR Part 21, - Nondiscrimination in Federally Assisted Programs of the Department of Transportation -- Effectuation of Title VI of the Civil Rights Act of 1964 (hereinafter referred to as the "Regulations") to the end that no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which the applicant receives Federal financial assistance and will immediately take any measures necessary to effectuate this agreement. Without limiting the above general assurance, the sponsor agrees concerning this grant that:

1. Each "program" and "facility" (as defined in Sections 21.23(e) and 21.23 (b)) will be conducted or operated in compliance with all requirements of the Regulations.
2. It will insert the clauses of Attachment 1 of this assurance in every contract subject to the Act and the Regulations.
3. Where Federal financial assistance is received to construct a facility, or part of a facility, the assurance shall extend to the entire facility and facilities operated in connection therewith.
4. Where Federal financial assistance is in the form or for the acquisition of real property or an interest in real property, the assurance shall extend to rights to space on, over, or under such property.
5. It will include the appropriate clauses set forth in Attachment 2 of this assurance, as a covenant running with the land, in any future deeds, leases, permits, licenses, and similar agreements entered into by the sponsor with other parties:
 - (a) for the subsequent transfer of real property acquired or improved with Federal financial assistance under this Project; and
 - (b) for the construction or use of or access to space on, over, or under real property acquired or improved with Federal financial assistance under this Project.
6. This assurance obligates the Sponsor for the period during which Federal financial assistance is extended to the program, except where the Federal financial assistance is to provide, or is in the form of personal property or real property or interest therein or structures or improvements thereon, in which case the assurance obligates the sponsor or any transferee for the longer of the following periods.
 - (a) the period during which the property is used for a purpose for which Federal financial assistance is extended, or for another purpose involving the provision of similar services or benefits, or
 - (b) the period during which the sponsor retains ownership or possession of the property.

7. It will provide for such methods of administration for the program as are found by the Secretary of Transportation or the official to whom he delegates specific authority to give reasonable guarantee that it, other sponsors, subgrantees, contractors, subcontractors, transferees, successors in interest, and other participants or Federal financial assistance under such program will comply with all requirements imposed or pursuant to the Act, the Regulations, and this assurance.

8. It agrees that the United States has a right to seek judicial enforcement with regard to any matter arising under the Act, the Regulations, and this assurance.

THIS ASSURANCE is given in consideration of and for the purpose of obtaining Federal financial assistance for this Project and is binding on its contractors, the sponsor, subcontractors, transferees, successors in interest and other participants in the Project. The person or persons whose signatures appear below are authorized to sign this assurance on behalf of the Sponsor.

DATED 7-26-11

Wichita Airport Authority
(Sponsor)

By _____
(Signature of Authorized Official)

CONTRACTOR CONTRACTUAL REQUIREMENTS

ATTACHMENT 1

During the performance of this contract, the contractor, for itself, its assignees and successors in interest (hereinafter referred to as the "contractor") agrees as follows:

1. **Compliance with Regulations.** The contractor shall comply with the Regulations relative to nondiscrimination in federally assisted programs of the Department of Transportation (hereinafter, "DOT") Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this contract.

2. **Nondiscrimination.** The contractor, with regard to the work performed by it during the contract, shall not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor shall not participate either directly or indirectly in the discrimination prohibited by section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.

3. **Solicitations for Subcontracts, Including Procurements of Materials and Equipment.** In all solicitations either by competitive bidding or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the contractor of the contractor's obligations under this contract and the Regulations relative to nondiscrimination on the grounds of race, color, or national origin.

4. **Information and Reports.** The contractor shall provide all information and reports required by the Regulations or directives issued pursuant thereto and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Sponsor or the Federal Aviation Administration (FAA) to be pertinent to ascertain compliance with such Regulations, orders, and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish this information, the contractor shall so certify to the sponsor or the FAA, as appropriate, and shall set forth what efforts it has made to obtain the information.

5. **Sanctions for Noncompliance.** In the event of the contractor's noncompliance with the nondiscrimination provisions of this contract, the sponsor shall impose such contract sanctions as it or the FAA may determine to be appropriate, including, but not limited to:

a. Withholding of payments to the contractor under the contract until the contractor complies, and/or

b. Cancellation, termination, or suspension of the contract, in whole or in part.

6. **Incorporation of Provisions.** The contractor shall include the provisions of paragraphs 1 through 5 in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations or directives issued Pursuant thereto. The contractor shall take such action with respect to any subcontract or procurement as the sponsor or the FAA may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the contractor may request the Sponsor to enter into such litigation to protect the interests of the sponsor and, in addition, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

CLAUSES FOR DEEDS, LICENSES, LEASES, PERMITS OR SIMILAR INSTRUMENTS

ATTACHMENT 2

The following clauses shall be included in deeds, licenses, leases, permits, or similar instruments entered into by the Sponsor pursuant to the provisions of Assurances 5(a) and 5(b).

1. The (grantee, licensee, lessee, permittee, etc., as appropriate) for himself, his heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree (in the case of deeds and leases add "as a covenant running with the land") that in the event facilities are constructed, maintained, or otherwise operated on the said property described in this (deed, license, lease, permit, etc.) for a purpose for which a DOT program or activity is extended or for another purpose involving the provision of similar services or benefits, the (grantee, licensee, lessee, permittee, etc.) shall maintain and operate such facilities and services in compliance with all other requirements imposed pursuant to 49 CFR Part 21, Nondiscrimination in Federally Assisted Programs of the Department of Transportation, and as said Regulations may be amended.

2. The (grantee, licensee, lessee, permittee, etc., as appropriate) for himself, his personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree (in the case of deeds and leases add "as a covenant running with the land") that: (1) no person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, (2) that in the construction of any improvements on, over, or under such land and the furnishing of services thereon, no person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, (3) that the (grantee, licensee, lessee, permittee, etc.) shall use the premises in compliance with all other requirements imposed by or pursuant to 49 CFR Part 21, Nondiscrimination in Federally Assisted Programs of the Department of Transportation, and as said Regulations may be amended.

ASSURANCES

Airport Sponsors

A. General.

1. These assurances shall be complied with in the performance of grant agreements for airport development, airport planning, and noise compatibility program grants for airport sponsors.
2. These assurances are required to be submitted as part of the project application by sponsors requesting funds under the provisions of Title 49, U.S.C., subtitle VII, as amended. As used herein, the term "public agency sponsor" means a public agency with control of a public-use airport; the term "private sponsor" means a private owner of a public-use airport; and the term "sponsor" includes both public agency sponsors and private sponsors.
3. Upon acceptance of this grant offer by the sponsor, these assurances are incorporated in and become part of this grant agreement.

B. Duration and Applicability.

1. **Airport Development or Noise Compatibility Program Projects Undertaken by a Public Agency Sponsor.** The terms, conditions and assurances of the grant agreement shall remain in full force and effect throughout the useful life of the facilities developed or equipment acquired for an airport development or noise compatibility program project, or throughout the useful life of the project items installed within a facility under a noise compatibility program project, but in any event not to exceed twenty (20) years from the date of acceptance of a grant offer of Federal funds for the project. However, there shall be no limit on the duration of the assurances regarding Exclusive Rights and Airport Revenue so long as the airport is used as an airport. There shall be no limit on the duration of the terms, conditions, and assurances with respect to real property acquired with Federal funds. Furthermore, the duration of the Civil Rights assurance shall be specified in the assurances.
2. **Airport Development or Noise Compatibility Projects Undertaken by a Private Sponsor.** The preceding paragraph 1 also applies to a private sponsor except that the useful life of project items installed within a facility or the useful life of the facilities developed or equipment acquired under an airport development or noise compatibility program project shall be no less than ten (10) years from the date of acceptance of Federal aid for the project.
3. **Airport Planning Undertaken by a Sponsor.** Unless otherwise specified in the grant agreement, only Assurances 1, 2, 3, 5, 6, 13, 18, 30, 32, 33, and 34 in section C apply to planning projects. The terms, conditions, and assurances of the grant agreement shall remain in full force and effect during the life of the project.

C. **Sponsor Certification.** The sponsor hereby assures and certifies, with respect to this grant that:

- 1. General Federal Requirements.** It will comply with all applicable Federal laws, regulations, executive orders, policies, guidelines, and requirements as they relate to the application, acceptance and use of Federal funds for this project including but not limited to the following:

Federal Legislation

- a. Title 49, U.S.C., subtitle VII, as amended.
- b. Davis-Bacon Act - 40 U.S.C. 276(a), et seq.¹
- c. Federal Fair Labor Standards Act - 29 U.S.C. 201, et seq.
- d. Hatch Act - 5 U.S.C. 1501, et seq.²
- e. Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 - Title 42 U.S.C. 4601, et seq.^{1 2}
- f. National Historic Preservation Act of 1966 - Section 106 - 16 U.S.C. 470(f).¹
- g. Archeological and Historic Preservation Act of 1974 - 16 U.S.C. 469 through 469c.¹
- h. Native Americans Grave Repatriation Act - 25 U.S.C. Section 3001, et seq.
- i. Clean Air Act, P.L. 90-148, as amended.
- j. Coastal Zone Management Act, P.L. 93-205, as amended.
- k. Flood Disaster Protection Act of 1973 - Section 102(a) - 42 U.S.C. 4012a.¹
- l. Title 49, U.S.C., Section 303, (formerly known as Section 4(f))
- m. Rehabilitation Act of 1973 - 29 U.S.C. 794.
- n. Civil Rights Act of 1964 - Title VI - 42 U.S.C. 2000d through d-4.
- o. Age Discrimination Act of 1975 - 42 U.S.C. 6101, et seq.
- p. American Indian Religious Freedom Act, P.L. 95-341, as amended.
- q. Architectural Barriers Act of 1968 - 42 U.S.C. 4151, et seq.¹
- r. Power Plant and Industrial Fuel Use Act of 1978 - Section 403- 2 U.S.C. 8373.¹
- s. Contract Work Hours and Safety Standards Act - 40 U.S.C. 327, et seq.¹
- t. Copeland Anti Kickback Act - 18 U.S.C. 874.1
- u. National Environmental Policy Act of 1969 - 42 U.S.C. 4321, et seq.¹
- v. Wild and Scenic Rivers Act, P.L. 90-542, as amended.
- w. Single Audit Act of 1984 - 31 U.S.C. 7501, et seq.²
- x. Drug-Free Workplace Act of 1988 - 41 U.S.C. 702 through 706.

Executive Orders

Executive Order 11246 - Equal Employment Opportunity¹
Executive Order 11990 - Protection of Wetlands
Executive Order 11988 – Flood Plain Management
Executive Order 12372 - Intergovernmental Review of Federal Programs
Executive Order 12699 - Seismic Safety of Federal and Federally Assisted New Building Construction¹
Executive Order 12898 - Environmental Justice

Federal Regulations

- a. 14 CFR Part 13 - Investigative and Enforcement Procedures.
- b. 14 CFR Part 16 - Rules of Practice For Federally Assisted Airport Enforcement Proceedings.
- c. 14 CFR Part 150 - Airport noise compatibility planning.
- d. 29 CFR Part 1 - Procedures for predetermination of wage rates.¹
- e. 29 CFR Part 3 - Contractors and subcontractors on public building or public work financed in whole or part by loans or grants from the United States.¹
- f. 29 CFR Part 5 - Labor standards provisions applicable to contracts covering federally financed and assisted construction (also labor standards provisions applicable to non-construction contracts subject to the Contract Work Hours and Safety Standards Act).¹
- g. 41 CFR Part 60 - Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor (Federal and federally assisted contracting requirements).¹
- h. 49 CFR Part 18 - Uniform administrative requirements for grants and cooperative agreements to state and local governments.³
- i. 49 CFR Part 20 - New restrictions on lobbying.
- j. 49 CFR Part 21 - Nondiscrimination in federally-assisted programs of the Department of Transportation - effectuation of Title VI of the Civil Rights Act of 1964.
- k. 49 CFR Part 23 - Participation by Disadvantaged Business Enterprise in Airport Concessions.
- l. 49 CFR Part 24 - Uniform relocation assistance and real property acquisition for Federal and federally assisted programs.^{1 2}
- m. 49 CFR Part 26 – Participation by Disadvantaged Business Enterprises in Department of Transportation Programs.
- n. 49 CFR Part 27 - Nondiscrimination on the basis of handicap in programs and activities receiving or benefiting from Federal financial assistance.¹
- o. 49 CFR Part 29 – Government wide debarment and suspension (nonprocurement) and government wide requirements for drug-free workplace (grants).
- p. 49 CFR Part 30 - Denial of public works contracts to suppliers of goods and services of countries that deny procurement market access to U.S. contractors.
- q. 49 CFR Part 41 - Seismic safety of Federal and federally assisted or regulated new building construction.¹

Office of Management and Budget (OMB) Circulars

- a. A-87 - Cost Principles Applicable to Grants and Contracts with State and Local Governments.
- b. A-133 - Audits of States, Local Governments, and Non-Profit Organizations

¹ These laws do not apply to airport planning sponsors.

² These laws do not apply to private sponsors.

³ 49 CFR Part 18 and OMB Circular A-87 contain requirements for State and Local Governments receiving Federal assistance. Any requirement levied upon State and Local Governments by this regulation and circular shall also be applicable to private sponsors receiving Federal assistance under Title 49, United States Code.

Specific assurances required to be included in grant agreements by any of the above laws, regulations or circulars are incorporated by reference in this grant agreement.

2. Responsibility and Authority of the Sponsor.

- a. **Public Agency Sponsor:** It has legal authority to apply for the grant, and to finance and carry out the proposed project; that a resolution, motion or similar action has been duly adopted or passed as an official act of the applicant's governing body authorizing the filing of the application, including all understandings and assurances contained therein, and directing and authorizing the person identified as the official representative of the applicant to act in connection with the application and to provide such additional information as may be required.
- b. **Private Sponsor:** It has legal authority to apply for the grant and to finance and carry out the proposed project and comply with all terms, conditions, and assurances of this grant agreement. It shall designate an official representative and shall in writing direct and authorize that person to file this application, including all understandings and assurances contained therein; to act in connection with this application; and to provide such additional information as may be required.

3. Sponsor Fund Availability. It has sufficient funds available for that portion of the project costs which are not to be paid by the United States. It has sufficient funds available to assure operation and maintenance of items funded under this grant agreement which it will own or control.

4. Good Title.

- a. It, a public agency or the Federal government, holds good title, satisfactory to the Secretary, to the landing area of the airport or site thereof, or will give assurance satisfactory to the Secretary that good title will be acquired.
- b. For noise compatibility program projects to be carried out on the property of the sponsor, it holds good title satisfactory to the Secretary to that portion of the property upon which Federal funds will be expended or will give assurance to the Secretary that good title will be obtained.

5. Preserving Rights and Powers.

- a. It will not take or permit any action which would operate to deprive it of any of the rights and powers necessary to perform any or all of the terms, conditions, and assurances in the grant agreement without the written approval of the Secretary, and will act promptly to acquire, extinguish or

modify any outstanding rights or claims of right of others which would interfere with such performance by the sponsor. This shall be done in a manner acceptable to the Secretary.

- b. It will not sell, lease, encumber, or otherwise transfer or dispose of any part of its title or other interests in the property shown on Exhibit A to this application or, for a noise compatibility program project, that portion of the property upon which Federal funds have been expended, for the duration of the terms, conditions, and assurances in this grant agreement without approval by the Secretary. If the transferee is found by the Secretary to be eligible under Title 49, United States Code, to assume the obligations of the grant agreement and to have the power, authority, and financial resources to carry out all such obligations, the sponsor shall insert in the contract or document transferring or disposing of the sponsor's interest, and make binding upon the transferee all of the terms, conditions, and assurances contained in this grant agreement.
- c. For all noise compatibility program projects which are to be carried out by another unit of local government or are on property owned by a unit of local government other than the sponsor, it will enter into an agreement with that government. Except as otherwise specified by the Secretary, that agreement shall obligate that government to the same terms, conditions, and assurances that would be applicable to it if it applied directly to the FAA for a grant to undertake the noise compatibility program project. That agreement and changes thereto must be satisfactory to the Secretary. It will take steps to enforce this agreement against the local government if there is substantial non-compliance with the terms of the agreement.
- d. For noise compatibility program projects to be carried out on privately owned property, it will enter into an agreement with the owner of that property which includes provisions specified by the Secretary. It will take steps to enforce this agreement against the property owner whenever there is substantial non-compliance with the terms of the agreement.
- e. If the sponsor is a private sponsor, it will take steps satisfactory to the Secretary to ensure that the airport will continue to function as a public-use airport in accordance with these assurances for the duration of these assurances.
- f. If an arrangement is made for management and operation of the airport by any agency or person other than the sponsor or an employee of the sponsor, the sponsor will reserve sufficient rights and authority to ensure that the airport will be operated and maintained in accordance with Title 49, United States Code, the regulations and the terms, conditions and assurances in the grant agreement and shall ensure that such arrangement also requires compliance therewith.
- g. It will not permit or enter into any arrangement that results in permission for the owner or tenant of a property used as a residence, or zoned for residential use, to taxi an aircraft between that property and any location on airport.

6. **Consistency with Local Plans.** The project is reasonably consistent with plans (existing at the time of submission of this application) of public agencies that are authorized by the State in which the project is located to plan for the development of the area surrounding the airport.
7. **Consideration of Local Interest.** It has given fair consideration to the interest of communities in or near where the project may be located.
8. **Consultation with Users.** In making a decision to undertake any airport development project under Title 49, United States Code, it has undertaken reasonable consultations with affected parties using the airport at which the project is proposed.
9. **Public Hearings.** In projects involving the location of an airport, an airport runway, or a major runway extension, it has afforded the opportunity for public hearings for the purpose of considering the economic, social, and environmental effects of the airport or runway location and its consistency with goals and objectives of such planning as has been carried out by the community and it shall, when requested by the Secretary, submit a copy of the transcript of such hearings to the Secretary. Further, for such projects, it has on its management board either voting representation from the communities where the project is located or has advised the communities that they have the right to petition the Secretary concerning a proposed project.
10. **Air and Water Quality Standards.** In projects involving airport location, a major runway extension, or runway location it will provide for the Governor of the state in which the project is located to certify in writing to the Secretary that the project will be located, designed, constructed, and operated so as to comply with applicable air and water quality standards. In any case where such standards have not been approved and where applicable air and water quality standards have been promulgated by the Administrator of the Environmental Protection Agency, certification shall be obtained from such Administrator. Notice of certification or refusal to certify shall be provided within sixty (60) days after the project application has been received by the Secretary.
11. **Pavement Preventive Maintenance.** With respect to a project approved after January 1, 1995, for the replacement or reconstruction of pavement at the airport, it assures or certifies that it has implemented an effective airport pavement maintenance-management program and it assures that it will use such program for the useful life of any pavement constructed, reconstructed or repaired with Federal financial assistance at the airport. It will provide such reports on pavement condition and pavement management programs as the Secretary determines may be useful.
12. **Terminal Development Prerequisites.** For projects which include terminal development at a public use airport, as defined in Title 49, it has, on the date of submittal of the project grant application, all the safety equipment required for certification of such airport under section 44706 of Title 49, United States Code, and all the security equipment required by rule or regulation, and has provided for

access to the passenger enplaning and deplaning area of such airport to passengers enplaning and deplaning from aircraft other than air carrier aircraft.

13. Accounting System, Audit, and Record Keeping Requirements.

- a. It shall keep all project accounts and records which fully disclose the amount and disposition by the recipient of the proceeds of the grant, the total cost of the project in connection with which the grant is given or used, and the amount or nature of that portion of the cost of the project supplied by other sources, and such other financial records pertinent to the project. The accounts and records shall be kept in accordance with an accounting system that will facilitate an effective audit in accordance with the Single Audit Act of 1984.
- b. It shall make available to the Secretary and the Comptroller General of the United States, or any of their duly authorized representatives, for the purpose of audit and examination, any books, documents, papers, and records of the recipient that are pertinent to the grant. The Secretary may require that an appropriate audit be conducted by a recipient. In any case in which an independent audit is made of the accounts of a sponsor relating to the disposition of the proceeds of a grant or relating to the project in connection with which the grant was given or used, it shall file a certified copy of such audit with the Comptroller General of the United States not later than six (6) months following the close of the fiscal year for which the audit was made.

14. Minimum Wage Rates. It shall include, in all contracts in excess of \$2,000 for work on any projects funded under the grant agreement which involve labor, provisions establishing minimum rates of wages, to be predetermined by the Secretary of Labor, in accordance with the Davis-Bacon Act, as amended (40 U.S.C. 276a-276a-5), which contractors shall pay to skilled and unskilled labor, and such minimum rates shall be stated in the invitation for bids and shall be included in proposals or bids for the work.

15. Veteran's Preference. It shall include in all contracts for work on any project funded under the grant agreement which involve labor, such provisions as are necessary to insure that, in the employment of labor (except in executive, administrative, and supervisory positions), preference shall be given to Veterans of the Vietnam era and disabled veterans as defined in Section 47112 of Title 49, United States Code. However, this preference shall apply only where the individuals are available and qualified to perform the work to which the employment relates.

16. Conformity to Plans and Specifications. It will execute the project subject to plans, specifications, and schedules approved by the Secretary. Such plans, specifications, and schedules shall be submitted to the Secretary prior to commencement of site preparation, construction, or other performance under this grant agreement, and, upon approval of the Secretary, shall be incorporated into this grant agreement. Any modification to the approved plans, specifications, and

schedules shall also be subject to approval of the Secretary, and incorporated into the grant agreement.

- 17. Construction Inspection and Approval.** It will provide and maintain competent technical supervision at the construction site throughout the project to assure that the work conforms to the plans, specifications, and schedules approved by the Secretary for the project. It shall subject the construction work on any project contained in an approved project application to inspection and approval by the Secretary and such work shall be in accordance with regulations and procedures prescribed by the Secretary. Such regulations and procedures shall require such cost and progress reporting by the sponsor or sponsors of such project as the Secretary shall deem necessary.
- 18. Planning Projects.** In carrying out planning projects:

 - a. It will execute the project in accordance with the approved program narrative contained in the project application or with the modifications similarly approved.
 - b. It will furnish the Secretary with such periodic reports as required pertaining to the planning project and planning work activities.
 - c. It will include in all published material prepared in connection with the planning project a notice that the material was prepared under a grant provided by the United States.
 - d. It will make such material available for examination by the public, and agrees that no material prepared with funds under this project shall be subject to copyright in the United States or any other country.
 - e. It will give the Secretary unrestricted authority to publish, disclose, distribute, and otherwise use any of the material prepared in connection with this grant.
 - f. It will grant the Secretary the right to disapprove the sponsor's employment of specific consultants and their subcontractors to do all or any part of this project as well as the right to disapprove the proposed scope and cost of professional services.
 - g. It will grant the Secretary the right to disapprove the use of the sponsor's employees to do all or any part of the project.
 - h. It understands and agrees that the Secretary's approval of this project grant or the Secretary's approval of any planning material developed as part of this grant does not constitute or imply any assurance or commitment on the part of the Secretary to approve any pending or future application for a Federal airport grant.
- 19. Operation and Maintenance.**

 - a. The airport and all facilities which are necessary to serve the aeronautical users of the airport, other than facilities owned or controlled by the United States, shall be operated at all times in a safe and serviceable condition and in accordance with the minimum standards as may be required or prescribed by applicable Federal, state and local agencies for maintenance and operation. It will not cause or permit any activity or action thereon

which would interfere with its use for airport purposes. It will suitably operate and maintain the airport and all facilities thereon or connected therewith, with due regard to climatic and flood conditions. Any proposal to temporarily close the airport for non-aeronautical purposes must first be approved by the Secretary. In furtherance of this assurance, the sponsor will have in effect arrangements for-

- (1) Operating the airport's aeronautical facilities whenever required;
- (2) Promptly marking and lighting hazards resulting from airport conditions, including temporary conditions; and
- (3) Promptly notifying airmen of any condition affecting aeronautical use of the airport. Nothing contained herein shall be construed to require that the airport be operated for aeronautical use during temporary periods when snow, flood or other climatic conditions interfere with such operation and maintenance. Further, nothing herein shall be construed as requiring the maintenance, repair, restoration, or replacement of any structure or facility which is substantially damaged or destroyed due to an act of God or other condition or circumstance beyond the control of the sponsor.

- b. It will suitably operate and maintain noise compatibility program items that it owns or controls upon which Federal funds have been expended.

20. Hazard Removal and Mitigation. It will take appropriate action to assure that such terminal airspace as is required to protect instrument and visual operations to the airport (including established minimum flight altitudes) will be adequately cleared and protected by removing, lowering, relocating, marking, or lighting or otherwise mitigating existing airport hazards and by preventing the establishment or creation of future airport hazards.

21. Compatible Land Use. It will take appropriate action, to the extent reasonable, including the adoption of zoning laws, to restrict the use of land adjacent to or in the immediate vicinity of the airport to activities and purposes compatible with normal airport operations, including landing and takeoff of aircraft. In addition, if the project is for noise compatibility program implementation, it will not cause or permit any change in land use, within its jurisdiction, that will reduce its compatibility, with respect to the airport, of the noise compatibility program measures upon which Federal funds have been expended.

22. Economic Nondiscrimination.

- a. It will make the airport available as an airport for public use on reasonable terms and without unjust discrimination to all types, kinds and classes of aeronautical activities, including commercial aeronautical activities offering services to the public at the airport.
- b. In any agreement, contract, lease, or other arrangement under which a right or privilege at the airport is granted to any person, firm, or corporation to conduct or to engage in any aeronautical activity for furnishing services to the public at the airport, the sponsor will insert and enforce provisions requiring the contractor to-

- (1) furnish said services on a reasonable, and not unjustly discriminatory, basis to all users thereof, and
- (2) charge reasonable, and not unjustly discriminatory, prices for each unit or service, provided that the contractor may be allowed to make reasonable and nondiscriminatory discounts, rebates, or other similar types of price reductions to volume purchasers.
- c. Each fixed-based operator at the airport shall be subject to the same rates, fees, rentals, and other charges as are uniformly applicable to all other fixed-based operators making the same or similar uses of such airport and utilizing the same or similar facilities.
- d. Each air carrier using such airport shall have the right to service itself or to use any fixed-based operator that is authorized or permitted by the airport to serve any air carrier at such airport.
- e. Each air carrier using such airport (whether as a tenant, non tenant, or subtenant of another air carrier tenant) shall be subject to such nondiscriminatory and substantially comparable rules, regulations, conditions, rates, fees, rentals, and other charges with respect to facilities directly and substantially related to providing air transportation as are applicable to all such air carriers which make similar use of such airport and utilize similar facilities, subject to reasonable classifications such as tenants or non tenants and signatory carriers and non signatory carriers. Classification or status as tenant or signatory shall not be unreasonably withheld by any airport provided an air carrier assumes obligations substantially similar to those already imposed on air carriers in such classification or status.
- f. It will not exercise or grant any right or privilege which operates to prevent any person, firm, or corporation operating aircraft on the airport from performing any services on its own aircraft with its own employees [including, but not limited to maintenance, repair, and fueling] that it may choose to perform.
- g. In the event the sponsor itself exercises any of the rights and privileges referred to in this assurance, the services involved will be provided on the same conditions as would apply to the furnishing of such services by commercial aeronautical service providers authorized by the sponsor under these provisions.
- h. The sponsor may establish such reasonable, and not unjustly discriminatory, conditions to be met by all users of the airport as may be necessary for the safe and efficient operation of the airport.
- i. The sponsor may prohibit or limit any given type, kind or class of aeronautical use of the airport if such action is necessary for the safe operation of the airport or necessary to serve the civil aviation needs of the public.

23. Exclusive Rights. It will permit no exclusive right for the use of the airport by any person providing, or intending to provide, aeronautical services to the public. For purposes of this paragraph, the providing of the services at an airport by a

single fixed-based operator shall not be construed as an exclusive right if both of the following apply:

- a. It would be unreasonably costly, burdensome, or impractical for more than one fixed-based operator to provide such services, and
- b. If allowing more than one fixed-based operator to provide such services would require the reduction of space leased pursuant to an existing agreement between such single fixed-based operator and such airport.

It further agrees that it will not, either directly or indirectly, grant or permit any person, firm, or corporation, the exclusive right at the airport to conduct any aeronautical activities, including, but not limited to charter flights, pilot training, aircraft rental and sightseeing, aerial photography, crop dusting, aerial advertising and surveying, air carrier operations, aircraft sales and services, sale of aviation petroleum products whether or not conducted in conjunction with other aeronautical activity, repair and maintenance of aircraft, sale of aircraft parts, and any other activities which because of their direct relationship to the operation of aircraft can be regarded as an aeronautical activity, and that it will terminate any exclusive right to conduct an aeronautical activity now existing at such an airport before the grant of any assistance under Title 49, United States Code.

- 24. Fee and Rental Structure.** It will maintain a fee and rental structure for the facilities and services at the airport which will make the airport as self-sustaining as possible under the circumstances existing at the particular airport, taking into account such factors as the volume of traffic and economy of collection. No part of the Federal share of an airport development, airport planning or noise compatibility project for which a grant is made under Title 49, United States Code, the Airport and Airway Improvement Act of 1982, the Federal Airport Act or the Airport and Airway Development Act of 1970 shall be included in the rate basis in establishing fees, rates, and charges for users of that airport.

25. Airport Revenues.

- a. All revenues generated by the airport and any local taxes on aviation fuel established after December 30, 1987, will be expended by it for the capital or operating costs of the airport; the local airport system; or other local facilities which are owned or operated by the owner or operator of the airport and which are directly and substantially related to the actual air transportation of passengers or property; or for noise mitigation purposes on or off the airport. Provided, however, that if covenants or assurances in debt obligations issued before September 3, 1982, by the owner or operator of the airport, or provisions enacted before September 3, 1982, in governing statutes controlling the owner or operator's financing, provide for the use of the revenues from any of the airport owner or operator's facilities, including the airport, to support not only the airport but also the airport owner or operator's general debt obligations or other facilities, then this limitation on the use of all revenues generated by the airport (and, in the case of a public airport, local taxes on aviation fuel) shall not apply.
- b. As part of the annual audit required under the Single Audit Act of 1984, the sponsor will direct that the audit will review, and the resulting audit

report will provide an opinion concerning, the use of airport revenue and taxes in paragraph (a), and indicating whether funds paid or transferred to the owner or operator are paid or transferred in a manner consistent with Title 49, United States Code and any other applicable provision of law, including any regulation promulgated by the Secretary or Administrator.

- c. Any civil penalties or other sanctions will be imposed for violation of this assurance in accordance with the provisions of Section 47107 of Title 49, United States Code.

26. Reports and Inspections. It will:

- a. submit to the Secretary such annual or special financial and operations reports as the Secretary may reasonably request and make such reports available to the public; make available to the public at reasonable times and places a report of the airport budget in a format prescribed by the Secretary;
- b. for airport development projects, make the airport and all airport records and documents affecting the airport, including deeds, leases, operation and use agreements, regulations and other instruments, available for inspection by any duly authorized agent of the Secretary upon reasonable request;
- c. for noise compatibility program projects, make records and documents relating to the project and continued compliance with the terms, conditions, and assurances of the grant agreement including deeds, leases, agreements, regulations, and other instruments, available for inspection by any duly authorized agent of the Secretary upon reasonable request; and
- d. in a format and time prescribed by the Secretary, provide to the Secretary and make available to the public following each of its fiscal years, an annual report listing in detail:
 - 1) all amounts paid by the airport to any other unit of government and the purposes for which each such payment was made; and
 - 2) all services and property provided by the airport to other units of government and the amount of compensation received for provision of each such service and property.

27. Use by Government Aircraft. It will make available all of the facilities of the airport developed with Federal financial assistance and all those usable for landing and takeoff of aircraft to the United States for use by Government aircraft in common with other aircraft at all times without charge, except, if the use by Government aircraft is substantial, charge may be made for a reasonable share, proportional to such use, for the cost of operating and maintaining the facilities used. Unless otherwise determined by the Secretary, or otherwise agreed to by the sponsor and the using agency, substantial use of an airport by Government aircraft will be considered to exist when operations of such aircraft are in excess of those which, in the opinion of the Secretary, would unduly interfere with use of the landing areas by other authorized aircraft, or during any calendar month that –

- a. Five (5) or more Government aircraft are regularly based at the airport or on land adjacent thereto; or

- b. The total number of movements (counting each landing as a movement) of Government aircraft is 300 or more, or the gross accumulative weight of Government aircraft using the airport (the total movement of Government aircraft multiplied by gross weights of such aircraft) is in excess of five million pounds.

28. Land for Federal Facilities. It will furnish without cost to the Federal Government for use in connection with any air traffic control or air navigation activities, or weather-reporting and communication activities related to air traffic control, any areas of land or water, or estate therein, or rights in buildings of the sponsor as the Secretary considers necessary or desirable for construction, operation, and maintenance at Federal expense of space or facilities for such purposes. Such areas or any portion thereof will be made available as provided herein within four months after receipt of a written request from the Secretary.

29. Airport Layout Plan.

- a. It will keep up to date at all times an airport layout plan of the airport showing (1) boundaries of the airport and all proposed additions thereto, together with the boundaries of all offsite areas owned or controlled by the sponsor for airport purposes and proposed additions thereto; (2) the location and nature of all existing and proposed airport facilities and structures (such as runways, taxiways, aprons, terminal buildings, hangars and roads), including all proposed extensions and reductions of existing airport facilities; and (3) the location of all existing and proposed nonaviation areas and of all existing improvements thereon. Such airport layout plans and each amendment, revision, or modification thereof, shall be subject to the approval of the Secretary which approval shall be evidenced by the signature of a duly authorized representative of the Secretary on the face of the airport layout plan. The sponsor will not make or permit any changes or alterations in the airport or any of its facilities which are not in conformity with the airport layout plan as approved by the Secretary and which might, in the opinion of the Secretary, adversely affect the safety, utility or efficiency of the airport.
- b. If a change or alteration in the airport or the facilities is made which the Secretary determines adversely affects the safety, utility, or efficiency of any federally owned, leased, or funded property on or off the airport and which is not in conformity with the airport layout plan as approved by the Secretary, the owner or operator will, if requested, by the Secretary (1) eliminate such adverse effect in a manner approved by the Secretary; or (2) bear all costs of relocating such property (or replacement thereof) to a site acceptable to the Secretary and all costs of restoring such property (or replacement thereof) to the level of safety, utility, efficiency, and cost of operation existing before the unapproved change in the airport or its facilities.

30. Civil Rights. It will comply with such rules as are promulgated to assure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or handicap be excluded from participating in any activity conducted with or

benefiting from funds received from this grant. This assurance obligates the sponsor for the period during which Federal financial assistance is extended to the program, except where Federal financial assistance is to provide, or is in the form of personal property or real property or interest therein or structures or improvements thereon in which case the assurance obligates the sponsor or any transferee for the longer of the following periods: (a) the period during which the property is used for a purpose for which Federal financial assistance is extended, or for another purpose involving the provision of similar services or benefits, or (b) the period during which the sponsor retains ownership or possession of the property.

31. Disposal of Land.

- a. For land purchased under a grant for airport noise compatibility purposes, it will dispose of the land, when the land is no longer needed for such purposes, at fair market value, at the earliest practicable time. That portion of the proceeds of such disposition which is proportionate to the United States' share of acquisition of such land will, at the discretion of the Secretary, (1) be paid to the Secretary for deposit in the Trust Fund, or (2) be reinvested in an approved noise compatibility project as prescribed by the Secretary, including the purchase of nonresidential buildings or property in the vicinity of residential buildings or property previously purchased by the airport as part of a noise compatibility program.
- b. For land purchased under a grant for airport development purposes (other than noise compatibility), it will, when the land is no longer needed for airport purposes, dispose of such land at fair market value or make available to the Secretary an amount equal to the United States' proportionate share of the fair market value of the land. That portion of the proceeds of such disposition which is proportionate to the United States' share of the cost of acquisition of such land will, (1) upon application to the Secretary, be reinvested in another eligible airport improvement project or projects approved by the Secretary at that airport or within the national airport system, or (2) be paid to the Secretary for deposit in the Trust Fund if no eligible project exists.
- c. Land shall be considered to be needed for airport purposes under this assurance if (1) it may be needed for aeronautical purposes (including runway protection zones) or serve as noise buffer land, and (2) the revenue from interim uses of such land contributes to the financial self-sufficiency of the airport. Further, land purchased with a grant received by an airport operator or owner before December 31, 1987, will be considered to be needed for airport purposes if the Secretary or Federal agency making such grant before December 31, 1987, was notified by the operator or owner of the uses of such land, did not object to such use, and the land continues to be used for that purpose, such use having commenced no later than December 15, 1989.
- d. Disposition of such land under (a) (b) or (c) will be subject to the retention or reservation of any interest or right therein necessary to ensure that such

land will only be used for purposes which are compatible with noise levels associated with operation of the airport.

32. **Engineering and Design Services.** It will award each contract, or sub-contract for program management, construction management, planning studies, feasibility studies, architectural services, preliminary engineering, design, engineering, surveying, mapping or related services with respect to the project in the same manner as a contract for architectural and engineering services is negotiated under Title IX of the Federal Property and Administrative Services Act of 1949 or an equivalent qualifications-based requirement **prescribed** for or by the sponsor of the airport.
33. **Foreign Market Restrictions.** It will not allow funds provided under this grant to be used to fund any project which uses any product or service of a foreign country during the period in which such foreign country is listed by the United States Trade Representative as denying fair and equitable market opportunities for products and suppliers of the United States in procurement and construction.
34. **Policies, Standards, and Specifications.** It will carry out the project in accordance with policies, standards, and specifications approved by the Secretary including but not limited to the advisory circulars listed in the Current FAA Advisory Circulars for AIP projects, dated _____ and included in this grant, and in accordance with applicable state policies, standards, and specifications approved by the Secretary.
35. **Relocation and Real Property Acquisition.** (1) It will be guided in acquiring real property, to the greatest extent practicable under State law, by the land acquisition policies in Subpart B of 49 CFR Part 24 and will pay or reimburse property owners for necessary expenses as specified in Subpart B. (2) It will provide a relocation assistance program offering the services described in Subpart C and fair and reasonable relocation payments and assistance to displaced persons as required in Subpart D and E of 49 CFR Part 24. (3) It will make available within a reasonable period of time prior to displacement, comparable replacement dwellings to displaced persons in accordance with Subpart E of 49 CFR Part 24.
36. **Access By Intercity Buses.** The airport owner or operator will permit, to the maximum extent practicable, intercity buses or other modes of transportation to have access to the airport; however, it has no obligation to fund special facilities for intercity buses or for other modes of transportation.
37. **Disadvantaged Business Enterprises.** The recipient shall not discriminate on the basis of race, color, national origin or sex in the award and performance of any DOT-assisted contract or in the administration of its DBE program or the requirements of 49 CFR Part 26. The Recipient shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure non discrimination in the award and administration of DOT-assisted contracts. The recipient's DBE program, as required by 49 CFR Part 26, and as approved by DOT, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the Recipient of its failure to carry out its approved program,

the Department may impose sanctions as provided for under Part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801).

- 38. Hangar Construction.** If the airport owner or operator and a person who owns an aircraft agree that a hangar is to be constructed at the airport for the aircraft at the aircraft owner's expense, the airport owner or operator will grant to the aircraft owner for the hangar a long term lease that is subject to such terms and conditions on the hangar as the airport owner or operator may impose.

39. Competitive Access.

- a. If the airport owner or operator of a medium or large hub airport (as defined in Section 47102 of Title 49, U.S.C.) has been unable to accommodate one or more requests by an air carrier for access to gates or other facilities at that airport in order to allow the air carrier to provide service to the airport or to expand service at the airport, the airport owner or operator shall transmit a report to the Secretary that-
 - (1) Describes the requests;
 - (2) Provides an explanation as to why the requests could not be accommodated; and
 - (3) Provides a time frame within which, if any, the airport will be able to accommodate the requests.
- b. Such report shall be due on either February 1 or August 1 of each year if the airport has been unable to accommodate the request(s) in the six (6) month period prior to the applicable due date.